

AARON FINCKE and MARK KLEPASKI,

Plaintiffs

v.

BENJAMIN BURNLEY,

Defendant

IN THE COURT OF COMMON PLEAS
OF LUZERNE COUNTY, PENNSYLVANIA

CIVIL ACTION

No. 2011-9269

FILED
PROTHONOTARY
LUZERNE COUNTY
JUL 13 PM 3:09

COMPLAINT FOR DECLARATORY JUDGMENT

AND NOW, come Plaintiffs, AARON FINCKE and MARK KLEPASKI, and hereby bring this action for Declaratory Judgment against Defendant, BENJAMIN BURNLEY, and in support thereof, aver as follows:

1. Plaintiff, Aaron Fincke ("Fincke"), is a competent adult individual residing at [REDACTED]

[REDACTED]

2. Plaintiff, Mark Klepaski ("Klepaski"), is a competent adult individual residing at [REDACTED]

[REDACTED]

3. Upon information and belief, Defendant, Benjamin Burnley, resides in the [REDACTED]

[REDACTED]

4. The Plaintiffs and Defendant are all members of a Band professionally known as "Breaking Benjamin" (the "Band").

5. On or about June 6, 2011, Defendant, through his counsel, Brian D. Caplan, filed a Demand for Arbitration with the American Arbitration Association ("AAA") alleging, *inter alia*, that Plaintiffs breached an alleged Agreement dated January 1, 2009 (the "Arbitration" or the "Arbitration proceeding").

6. Defendant alleged that the January 1, 2009 Agreement contained a clause wherein disputes that fall under the alleged Agreement, shall be submitted to binding arbitration



administered by the AAA in Luzerne County, Pennsylvania. A copy of this alleged Agreement is set forth hereto as Exhibit "1" and incorporated herein by reference.

7. Prior to filing the Demand for Arbitration and allegedly pursuant to the alleged Agreement, Defendant attempted to dismiss both Plaintiffs from the Band for "just cause" for allegedly violating the terms of the alleged Agreement.

8. The Demand for Arbitration seeks money damages in excess of \$250,000.00, as well as certain types of declaratory relief including the declaration that the above referenced alleged dismissals were for "just cause." A copy of the Demand for Arbitration and attached Exhibits is attached hereto as Exhibit "2" and incorporated herein by reference.

9. The alleged impetus for the Arbitration filed with AAA was an alleged breach of the alleged Agreement by Plaintiffs that was alleged to have occurred on or about May 13, 2011.

10. While Plaintiffs dispute and strictly deny the allegations and claims against them set forth in the Arbitration proceeding, and will have many counterclaims to raise at the appropriate time, the merits of the Arbitration are not before the Court at this time. Instead the threshold issue as to whether a valid arbitration agreement exists to subject Plaintiffs to the arbitration forum is the issue in this Declaratory Judgment action.

11. Paragraph 3 of the alleged Agreement sets forth the terms of the Agreement and expressly states when the Agreement shall terminate. Paragraph 3 of the alleged Agreement states as follows:

The term of this Agreement shall be deemed to have commenced on the date hereof and shall continue until the earlier of the following: (a) such time as Burnley is deceased, disabled or infirm to the extent that he is incapable of completing the new studio album to be recorded hereafter by the Band for delivery to Hollywood Records (the "New Band Album") and/or performing

in connection with live concert appearances in support of the New Band Album; or (b) the end of the "Album Cycle" hereinafter defined. The time period commencing as of the date hereof and ending as of the completion of all live concert appearances and tours performed by the Band in support of the New Band Album shall sometimes hereinafter be referred to as the "Album Cycle". Fincke and/or Klepaski may be dismissed from the Band for "cause" as such term is commonly understood in the music industry. With respect to the death, dismissal for cause or withdrawal from the Band of Fincke and Klepaski (each a "Departed Member" as applicable), the remaining Members shall have the right to continue hereunder without the Departed Members(s) and/or to form a new agreement among themselves. In the event that a Member should become a Departed Member, the Term hereof with respect to such Departed Member shall be deemed to have terminated as of the date that such Member became a Departed Member.

12. In the instant case, the Album Cycle referenced in ¶ 3 pertained to the album "Dear Agony" which was the only album completed by the Band after January 1, 2009.

13. This Album Cycle ended on or before June 1, 2010, thereby terminating the alleged Agreement by its very terms.

14. Furthermore, on or about June 1, 2010, Defendant, Burnley, represented that he is disabled or infirm to the extent that he could no longer perform his duties in connection with performing live concert appearances in support of the new Band album and due to his alleged condition refused to perform at a scheduled concert in Vancouver, Canada on or about that date.

15. Since on or about June 1, 2010, Defendant has continued to represent to Plaintiffs that he is disabled and/or infirm and has remained unable to perform.

16. Defendant's disability and/or infirmity has also terminated the alleged Agreement by the terms set forth therein.

17. Accordingly, because the alleged Agreement that allegedly serves as the basis for the jurisdiction of the Arbitration and serves as the alleged basis for the claims brought against

Plaintiffs in the Arbitration has expired by its very terms, the AAA does not have jurisdiction to hear and resolve the Arbitration proceeding.

18. Because the alleged Agreement has ended, there is no valid arbitration agreement between the parties.

19. Thus, the claims asserted against Plaintiffs are not within the scope of the alleged Agreement as the alleged Agreement ended before the alleged conduct of Plaintiffs that gave rise to the alleged claims against Plaintiffs in the Arbitration proceeding.

20. Thus, the AAA does not have jurisdiction to hear and adjudicate the alleged claims against Plaintiffs.

21. The jurisdiction of the courts to decide whether a matter is properly arbitrated is explicitly set forth in 42 Pa. C.S.A. § 7304.

22. Further, a trial court is empowered to address questions of substantive arbitrability such as whether there is a valid arbitration agreement and whether the disputed claims are within the scope of that agreement. Ross Development Company v. Advanced Building Development Inc., 803 A.2d 194 (Pa. Super. 2002)

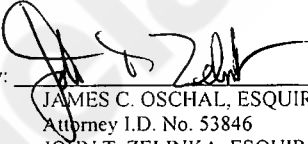
23. Accordingly, because the courts have jurisdiction to decide whether a matter is properly at arbitration, Plaintiffs seek a Declaratory Judgment in their favor that the alleged agreement has ended and therefore there is no valid arbitration agreement that can be the basis of the pending Arbitration proceeding.

WHEREFORE, Plaintiffs, Aaron Fincke and Mark Klepaski, find in favor of Plaintiffs and against Defendant, BENJAMIN BURNLEY, and enter a Judgment declaring as follows:

- a) the alleged Agreement ended on or about June 1, 2010 prior to the alleged conduct that serves as the basis for the Demand for Arbitration;

- b) there is no valid arbitration agreement between the parties;
- c) the disputed claims pending in the Arbitration are not within the scope of a valid arbitration agreement; and,
- d) the pending Arbitration is stayed and/or dismissed for lack of jurisdiction over the parties.

Rosenn, Jenkins & Greenwald, LLP

By: 

JAMES C. OSCHAL, ESQUIRE
Attorney I.D. No. 53846
JOHN T. ZELINKA, ESQUIRE
Attorney I.D. No. 86707
15 South Franklin Street
Wilkes-Barre, PA 18711
(570) 826-5654
Attorneys for Plaintiffs,
Aaron Fincke and Mark Klepaski



EXHIBIT “1”

Agreement made this 1st day of January, 2009 by and between Benjamin Burnley ("Burnley"), Aaron Fincke ("Fincke") p/k/a Aaron Fink and Mark Klepaski ("Klepaski") p/k/a Mark James.

1. Burnley, Fincke and Klepaski have been and intend during the Term hereof to continue to perform as members of the band professionally known as "Breaking Benjamin" (hereinafter collectively the "Band" and individually each a "Member"). This Agreement sets forth the basic terms by which the Band will conduct its business and shall apply to any partnership, corporation, LLC or any other business entity that the Members may form to conduct the business of the Band. It is the Members' intention to enter into one or more formal agreements containing the terms of this agreement and additional terms. In connection therewith, the Members shall negotiate in good faith any such additional terms, provided that unless and until such more formal agreement(s) has/have been fully executed, this agreement shall be deemed valid and legally binding.

2. Except as set forth herein, the laws of the State of Pennsylvania relating to the applicable business entities shall apply to each and every business entity Burnley, Fincke and Klepaski may form to conduct Band-related business. Disputes hereunder shall be submitted to binding arbitration to be administered by the American Arbitration Association in Luzerne County, Pennsylvania.

3. The Term of this Agreement shall be deemed to have commenced on the date hereof and shall continue until the earlier of the following: (a) such time as Burnley is deceased, disabled or infirm to the extent that he is incapable of completing the new studio album to be recorded hereafter by the Band for delivery to Hollywood Records (the "New Band Album") and/or performing in connection with live concert appearances in support of the New Band Album; or (b) the end of the "Album Cycle" hereinafter defined. The time period commencing as of the date hereof and ending as of the completion of all live concert appearances and tours performed by the Band in support of the New Band Album shall sometimes hereinafter be referred to as the "Album Cycle". Fincke and/or Klepaski may be dismissed from the Band for "cause" as such term is commonly understood in the music industry. With respect to the death, dismissal for cause or withdrawal from the Band of Fincke or Klepaski (each a "Departed Member" as applicable), the remaining Members shall have the right to continue hereunder without the Departed Member(s) and/or to form a new agreement among themselves. In the event that a Member should become a Departed Member, the Term hereof with respect to such Departed Member shall be deemed to have terminated as of the date that such Member became a Departed Member.

4. Each Member hereby grants the Band the right in perpetuity to use and to permit others to use and publish the applicable Member's name (both legal and professional, and whether presently or hereafter used by such Member), likeness,

caricature, other identification and biographical material concerning Member (collectively, the "NIL Materials") for purposes of trade: (a) in connection with the Member's Band-related activities which activities occurred during the Term; and/or (b) in connection with product created in connection with contracts entered during the Term. During the Term each Member shall have the right to approve the applicable NIL Materials related to such Member, provided that such approval shall not be unreasonably withheld and any objections must be specific, in writing and received by the Band within ten (10) days after the applicable material(s) have been made available to the applicable Member. The applicable Member's approval shall be deemed given in the event that such Member shall fail to submit objections in accordance with the provisions of this subparagraph. Once a Member has approved any such NIL Material(s), the same need not be approved again in respect of any subsequent use thereof.

5. For One Dollar (\$1) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Fincke and Klepaski hereby irrevocably assign to Burnley any and all right, title and interest that Fincke and Klepaski may have in and to the Band name "Breaking Benjamin" as well as any and all logo(s) and/or trademark(s) and/or servicemark(s) in any manner connected thereto (collectively the "ID Materials"). For One Dollar (\$1) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Burnley hereby grants the Band a license (the "ID Materials License") during the "ID Materials License Term" (hereinafter defined) to utilize the ID Materials solely in connection the activities of the Band provided that: (a) the ID Materials may only be used by a band containing Burnley, Fincke and Klepaski as Members except: (i) in the event that Fincke or Klepaski is a Departing Member the ID Materials may be used by Burnley and the other remaining Member; and (ii) in the event that both Fincke and Klepaski are Departing Members the ID Materials may be used by Burnley alone; and (b) no Departed Member shall have the right to utilize the ID Materials (either alone or with another Departed Member) after the date that such Member became a Departed Member. The "ID Materials License Term" shall commence as of the date hereof and shall automatically terminate upon the earliest of the following: (c) Burnley's death; (d) the failure of the Band to perform in live concert or to record master recordings for a period of five (5) years; or (e) the expiration of the life of the trademark(s) and/or servicemark(s). The parties shall execute any and all additional documents required to effectuate the foregoing assignments and grants.

6. During the Term, all net income derived by the Band in connection with Band-related activities shall be divided as follows:

A. With respect to the New Band Album, provided that all Members have preformed for the recording of the master recordings embodied thereupon, it is contemplated that Hollywood Records will be forwarding an initial so-called "in-pocket" advance in the amount of Two Hundred Twenty Five Thousand (\$225,000) Dollars,

provided that such advance is paid by Hollywood Records, such advance shall be allocated as follows: (a) One Hundred Thousand (\$100,000) Dollars to Burnley; (b) Sixty Two Thousand Five Hundred (\$62,500) Dollars to Fincke; and (c) Sixty Two Thousand Five Hundred (\$62,500) Dollars to Klepaski. Notwithstanding anything to the contrary in this agreement: (A) In the event that the aforementioned "in pocket" advance is less than Two Hundred Twenty Five Thousand (\$225,000) Dollars but at least One Hundred Twenty Five Thousand (\$125,000) Dollars, Fincke and Klepaski shall each receive Sixty Two Thousand Five Hundred (\$62,500) Dollars therefrom with Burnley receiving the remainder; and (B) In the event that the aforementioned "in pocket" advance is less than One Hundred Twenty Five Thousand (\$125,000) Dollars, Fincke and Klepaski shall each receive fifty percent (50%) thereof with Burnley receiving no part thereof. Otherwise, with respect to the master recordings recorded by all members of the Band in connection with the New Band Album, the allocation of net advances and royalties shall be based upon each respective Member's contribution(s) to the applicable master recording(s). The allocation of such revenue shall be documented in one or more separate agreement(s) (each a "Term Recording Allocation Agreement").

B. With respect to net publishing monies derived from musical compositions written during the Term (each a "Term Composition"), only the applicable Member(s) who actually wrote such composition(s) shall be entitled to a share thereof and the allocation of such share(s) shall be on a song-by-song basis in accordance with the applicable Member(s) authorship of such musical composition(s). The allocation of such revenue shall be documented in one or more separate agreement(s) (each a "Term Composition Split Agreement").

C. With respect to net monies from merchandise, excluding merchandise sold in connection with live performances, and all other sources not addressed in the applicable Term Recording Allocation Agreement(s) and/or Term Composition Split Agreement(s) and/or in subparagraph 6(D) below the allocation thereof shall be as follows: (i) 1/3 thereof to Burnley; (ii) 1/3 thereof to Fincke; and (iii) 1/3 thereof to Klepaski. ;

D. With respect to net monies from touring including merchandise sold in connection with live performances, the allocation thereof shall be as follows: (i) with respect to the net monies derived from the first seventy five (75) live performance dates: (a) 1/3 thereof to Burnley; (b) 1/3 thereof to Fincke; and (c) 1/3 thereof to Klepaski; (ii) with respect to the net monies derived from the next (50) live performance dates (i.e., with respect to shows 76 through 125): (a) 35% thereof to Burnley; (b) 32½% thereof to Fincke; and (c) 32½% thereof to Klepaski; and (ii) with respect to all net monies derived from the 125th and all subsequent live performance dates: (a) 40% thereof to Burnley; (b) 30% thereof to Fincke; and (c) 30% thereof to Klepaski.

7. For the avoidance of doubt, following the Term, each applicable Member shall be entitled to such Member's allocated share of the following: A. net revenues derived



from merchandise sold during the Term; B. net revenues derived from Term Recordings in accordance with the applicable Term Recording Allocation Agreement(s); and C. net revenues derived from Term Compositions in accordance with the applicable Term Composition Split Agreement(s).

8. All expenses in connection with Band-related activities shall be deemed "off-the-top" expenses to be deducted from gross revenues prior to distribution to the applicable Members.

9. During the Term, no manager, attorney, accountant, tour manager, road crew or other employee shall be hired or fired except by unanimous consent of the Members.


10. No Member of the Band shall enter into any agreement that binds the Band without the written consent of all then-current Members. Each Member warrants and represents that if such Member is offered an opportunity for the Band, such Member shall (i) inform the offerer that no individual Member has authority to bind the Band; (ii) inform the offerer that the Band may only be bound by a written document that is signed by all the then-current Members; and (iii) inform the other then-current Members of the offer. Each Member shall indemnify and hold the other Members and the Band harmless from any cost, liability or expense (including all reasonable attorney's fees) that arise from a breach of this representation and warranty.

11. This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof. No modification, amendment, waiver, termination or discharge of this Agreement shall be binding any party hereto unless confirmed by a written instrument signed by the applicable parties hereto.

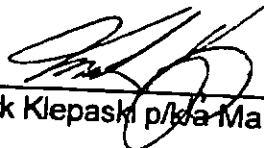
ACCEPTED AND AGREED:



Benjamin Burnley



Aaron Fincke p/k/a Aaron Fink



Mark Klepaski p/k/a Mark James





EXHIBIT “2”

AMERICAN ARBITRATION ASSOCIATION
LUZERNE COUNTY, PENNSYLVANIA

-----X
BENJAMIN BURNLEY,

Claimant,

-against-

AARON FINCKE and MARK KLEPASKI,

Respondents.
-----X

**DEMAND FOR
ARBITRATION**

STATEMENT OF CLAIMS

Claimant Benjamin Burnley, by his attorneys Caplan & Ross, LLP, as and for his Statement of Claims against Respondents Aaron Fincke and Mark Klepaski, alleges as follows:

PARTIES

1. Claimant Benjamin Burnley ("Burnley" or "Claimant") resides in the City of Harveys Lake in the State of Pennsylvania.
2. Upon information and belief, Respondent Aaron Fincke, p/k/a "Aaron Fink" ("Fincke") resides in the City of Drums in the State of Pennsylvania.
3. Upon information and belief, Respondent Mark Klepaski p/k/a "Mark James" ("Klepaski") resides in the City of Mountain Top in the State of Pennsylvania. (Fincke and Klepaski are sometimes hereinafter collectively referred to as "Respondents.")

BACKGROUND

4. In or about 2001, a musical group professionally known as "Breaking Benjamin" (the "Band") was formed by Burnley, its sole founding member (the "Band").

5. In or about 2001, the Band was comprised of two members: Burnley and Jeremy Hummel ("Hummel").

6. The Band entered into a recording agreement dated as of February 26, 2002 with Hollywood Records, Inc. ("Hollywood") (the "Recording Agreement"). A copy of the Recording Agreement is annexed hereto as Exhibit A.

7. In or about late 2002, Respondents Fincke and Klepaski joined the Band.

8. In or about late 2002/early 2003, Respondents became signatories to the Recording Agreement and agreed to be bound by the terms thereof.

9. Paragraph 9 of the short-form Recording Agreement provides that:

Creative issues (i.e., the selection of studios, producers, material to be recorded, video concepts, album artwork) shall be mutually determined by [the Band] and Hollywood.

10. Paragraph 6(h)(ii) of the long-form Recording Agreement provides that:

[Hollywood] shall not without [the Band's] consent release Phonograph Records embodying any so-called 'outtakes.'

11. Paragraph 6(h)(iv) of the long-form Recording Agreement provides that:

The Masters to be embodied in each G[reatest] H[its] Album to be released by [Hollywood] during the Term shall be determined mutually by [the Band] and [Hollywood]. Any Master which is embodied on the so-called 'A-side' of a Single released by us during the Term which has ever been listed among the top one hundred (100) positions on the Billboard chart currently entitled 'The Billboard Hot 100' (or its successor chart) is hereby deemed approved by [the Band] for use on a GH Album. If [the Band] and [Hollywood] cannot mutually determine the Masters to be embodied on a GH Album, then the Masters shall be alternately selected by [the Band] and [Hollywood] (with [the Band] choosing first) until the total number of Masters for that GH Album (as determined by [Hollywood]) has been selected.

12. Paragraph 6(h)(ix) of the long-form Recording Agreement provides that:

[Hollywood] shall not remix, edit or materially alter (other than for promotional purposes), without [the Band's] consent, any Master after that Master is satisfactorily delivered to [Hollywood] in accordance with the terms hereof (and [the Band] and [Hollywood] shall mutually approve any remixer engaged to remix a Master for promotional purposes after that Master is satisfactorily delivered to [Hollywood]). The foregoing provisions of this subparagraph shall not apply with respect to any remixing, editing or material alterations required for the purpose of equalizing the running time of a particular Record configuration.

13. Burnley, Hummel, Fincke and Klepaski performed together jointly as "Breaking Benjamin" and together performed on the sound recordings appearing on the albums entitled "Saturate" (2002) and "We Are Not Alone" (2004), and the Breaking Benjamin EP titled "So Cold" (2004), each of which were commercially released by Hollywood.

14. Each of the Compositions contained on the "Saturate" album were written in whole or in part by Burnley with no contributions from Respondents.

15. The majority of the compositions contained on the "We Are Not Alone" album were written predominantly by Burnley and musician Billy Corgan with minimal, if any, contributions from Respondents.

16. The "So Cold" EP contained a composition entitled "Blow Me Away," which was written by Burnley with no contributions from Respondents.

17. On or about September 7, 2004, Hummel was dismissed from the Band.

18. Burnley, Fincke and Klepaski continued to perform together as "Breaking Benjamin" following Hummel's departure from the Band.

19. In 2006, the Band released an album entitled "Phobia."

20. In 2009, the Band released an album entitled "Dear Agony."

21. Each of the compositions contained on the “Phobia” album were written in whole or in part by Burnley with minimal contributions, if any, from Respondents.

22. Each of the compositions contained on the “Dear Agony” album were written by Burnley with musician Jasen Rauch.

23. From the inception of the Band’s creation in 2002 to the present, Burnley has carefully crafted and shaped the Band’s public persona.

24. At all relevant times, the musical integrity and quality of the recordings created by the Band for public dissemination were of the utmost importance to Burnley and the same was known by Respondents.

25. On or about January 1, 2009, Claimant and Respondents entered into a written partnership agreement governing the parties’ relationship with respect to the Band (the “Partnership Agreement”). A copy of the Partnership Agreement is annexed hereto as Exhibit B and is incorporated by reference and made a part hereof.

26. Paragraph 10 of the Partnership Agreement provides that:

No Member of the Band shall enter into any agreement that binds the Band without the written consent of all then-current Members. Each Member warrants and represents that if such Member is offered an opportunity for the Band, such Member shall (i) inform the offerer that no individual Member has authority to bind the Band; (ii) inform the offerer that the Band may only be bound by a written document that is signed by all the then-current Members; and (iii) inform the other then-current Members of the offer. Each Member shall indemnify and hold the other Members and the Band harmless from any cost, liability or expense (including all reasonable attorney’s fees) that arise from a breach of this representation and warranty.

(emphasis added).

27. Paragraph 2 of the Partnership Agreement contains an arbitration provision requiring that any disputes relating to the Partnership Agreement be settled through binding arbitration administered by the American Arbitration Association in Luzerne County, Pennsylvania.

Respondents' Unauthorized and Unilateral Action on behalf of the Band

28. On or about March 10, 2010, Hollywood Records requested that the Band record two new master recordings and sought permission from the Band to release (i) a new version of "Blow Me Away" (a track appearing on the Band's 2004 EP titled "So Cold") that had been unilaterally modified by Hollywood to include new additional vocals by Sydnee Duran, p/k/a "Valora," who had not recorded the original song (the "Blow Me Away Single") in connection with a Greatest Hits Album (the "GH Album"), and (ii) a "collector's edition" album containing the GH Album and a second disc embodying previously-unreleased "rarities" (the "Rarities Album").

29. Hollywood, without any prior permission or authorization from the Band, took the original "Blow Me Away" master and remixed, edited and materially altered it by adding the separately-recorded vocals of Valora to the original in order to transform it from a solo featured recording to a duet.

30. The "Blow Me Away" Single is a remixed, edited and/or materially altered version of the master recording of Blow Me Away, and was created without Claimant's consent, as required under paragraph 6(h)(ix) of the Recording Agreement.

31. The proposed Rarities Album contains previously-unreleased materials comprised of incomplete music and outtakes, the release of which requires the Band's consent pursuant to paragraph 6(h)(ii) of the long-form Recording Agreement.

32. In connection with its request to release the "Blow Me Away" Single, the GH Album, and the Rarities Album, Hollywood offered the band a \$250,000 recording fund and a \$100,000 publishing advance.

33. Such proposal falls squarely within the purview of contracts requiring unanimous Band Member approval under paragraph 10 of the Partnership Agreement.

34. Claimant had significant reservations about Hollywood's overall offer and believed that the proposed release of the "Blow Me Away" Single, in particular, was not in the best interests of the Band and would reflect poorly upon it.

35. Claimant, individually and by and through his representatives, made his position on these issues known to Respondents.

36. Historically, Nicholas C. Ferrara, Esq. ("Ferrara") has been the transactional attorney on behalf of the Band and he alone has been the Band's representative vis-à-vis negotiations with Hollywood concerning the Band's affairs.

37. At no time did Mr. Ferrara ever communicate to Hollywood Records the Band's intent to accept this offer.

38. Upon information and belief, during the first ten days of May, 2011, Hollywood, without any prior permission or authorization from the Band, released the "Blow Me Away" Single.

39. On May 13, 2011, Jonathan Blank, Respondents' representative, left a voicemail with Mr. Ferrara confirming that Respondents agreed with Claimant that the "Blow Me Away" Single was not acceptable.

40. Unbeknownst to Claimant, later that same day, Respondents purported to, on behalf of the Band, retroactively give Hollywood the right to release the "Blow Me Away"

Single and the Rarities Album in order to receive \$100,000 out of a new \$150,000 offer made by Hollywood unilaterally to Respondents' representatives.

41. At no time prior to accepting the new offer did Respondents or their representative inform Claimant, Mr. Ferrara, or the Band's management that such offer was even made.

Respondents Breached the Partnership Agreement and Their Fiduciary Duties

42. As members of the Band and signatories to the Partnership Agreement, a fiduciary relationship exists between Respondents and Claimant.

43. Thus, Respondents owe Claimant the highest fiduciary duty of loyalty, which requires Respondents to act for the common benefit of all Band members in all transactions relating to the Band, refrain from taking advantage of Claimant, and fully disclose all information relating to the Band.

44. Respondents' unauthorized and clandestine approval of Hollywood's offer in exchange for monies payable to each of them constitutes a flagrant violation of Respondents' fiduciary duties to Claimant.

45. Further, Respondents' aforementioned actions constitute direct violations of the provisions of Paragraph 10 of the Partnership Agreement.

46. Upon information and belief, Respondents did not inform Hollywood Records that they alone did not have the authority to bind the Band with respect to the "Blow Me Away" Single and Rarities Album request or that the Band may only be bound to such requests by written agreement signed by all members of the Band.

Respondents Were Properly Dismissed from the Band for Cause

47. Paragraph 3 of the Partnership Agreement provides, in pertinent part, that “Fincke and/or Klepaski may be dismissed from the Band for ‘cause’ as such term is commonly understood in the music industry” and, in the event of such dismissal for cause, “the remaining Members [i.e., Claimant] shall have the right to continue...without the Departed Member(s).”

48. By email dated May 15, 2011, Claimant dismissed Respondents from the Band for “cause” in accordance with the Partnership Agreement.

49. Respondents’ conduct constituted just cause for their dismissal from the Band.

Claimant Owns the Band Name

50. With respect to the Band name, “Breaking Benjamin,” as well as any and all logos, trademarks and service marks related thereto (hereinafter the “Breaking Benjamin Mark”), Fincke and Klepaski irrevocably assigned any and all right, title and interest that they might have therein or thereto to Claimant pursuant to paragraph 5 of the Partnership Agreement.

51. Pursuant to paragraph 5 of the Partnership Agreement, Burnley licensed the Breaking Benjamin Mark to the Band, conditioned upon Burnley’s right to exclusively use the Breaking Benjamin Mark if Respondents became “Departing Members” as that term is defined in the Partnership Agreement.

52. Respondents have become “Departing Members,” and accordingly, Claimant retains ownership of the Breaking Benjamin Mark, including, but not limited to the Band name “Breaking Benjamin,” and has the exclusive right to tour using the Band name and to otherwise conduct all forms of business using that name on a going forward basis.

FIRST CLAIM

53. Claimant repeats and realleges the allegations contained in paragraphs 1 through 52 above as if set forth herein at length.

54. By reason of the foregoing, Respondents have materially breached the Agreement.

55. Claimant has satisfactorily performed all of his obligations to Respondents under the Agreement.

56. As a direct and proximate result of Respondents' breach of the Agreement, Claimant has suffered damages in an amount to be determined at a hearing in this action, but, upon information and belief, in no event less than \$250,000.

SECOND CLAIM

57. Claimant repeats and realleges the allegations contained in paragraphs 1 through 56 hereof as if fully set forth herein.

58. By reason of the conduct alleged herein, Respondents have breached their fiduciary duties of loyalty and good faith owed to Claimant.

59. As a result of these breaches, Claimant has suffered monetary damages in an amount to be determined at a hearing in this action, but, upon information and belief, in no event less than \$250,000.

60. Claimant has no adequate remedy at law.

THIRD CLAIM

61. Claimant repeats and realleges the allegations contained in paragraphs 1 through 60 above as if set forth herein at length.

62. By reason of the conduct alleged herein, Claimant had just cause for dismissing Respondents from the Band.

63. Claimant is entitled to a declaration that (i) Respondents were not authorized/had no authority to unilaterally approve the release of Blow Me Away or Rarities; and (ii) Respondents were properly dismissed from the Band for "cause" in accordance with the Partnership Agreement.

64. Claimant has no adequate remedy at law.

FOURTH CLAIM

65. Claimant repeats and realleges the allegations contained in paragraphs 1 through 64 above as if set forth herein at length.

66. By reason of the language contained in paragraph 5 of the Partnership Agreement, Claimant is entitled to a declaration that: (i) Respondents are "Departing Members" of the Band Breaking Benjamin, and accordingly, (ii) Claimant is the exclusive owner of the Breaking Benjamin Mark, including, but not limited to, the Band name, "Breaking Benjamin."

67. Claimant has no adequate remedy at law.

FIFTH CLAIM

68. Claimant repeats and realleges the allegations contained in paragraphs 1 through 67 above as if set forth herein at length.

69. By reason of the foregoing, Respondents have caused, or will cause, the release of the New Blow Me Away, which remixes, edits and/or materially alters the original master recording of Blow Me Away, in such manner as to distort, mutilate, and/or detrimentally modify the original master recording so as to be prejudicial to Claimant's artistic integrity, honor and reputation.

70. By reason of the foregoing, Claimant is entitled to monetary damages in an amount to be determined at a hearing in this action, but, upon information and belief, in no event less than \$250,000.

PRAYER FOR RELIEF

WHEREFORE, Claimant respectfully requests judgment against Respondents as follows:

- (a) An award to Claimant of compensatory damages for Respondents' breaches of the Partnership Agreement and their fiduciary duties to Claimant in an amount to be determined at a hearing of this action and in no event less than \$250,000;
- (b) An award to Claimant of punitive damages for Respondents' breaches of their fiduciary duties owed to Claimant and their fraudulent conduct, in an amount to be determined at a hearing in this action and in no event less than \$250,000;
- (c) An Order declaring that:
 - (i) Respondents were not authorized/had no authority to unilaterally approve the release of Blow Me Away or Rarities;
 - (ii) Respondents were properly dismissed from the Band for "cause";
 - (iii) Respondents are "Departing Members" of the Band Breaking Benjamin; and
 - (iv) Claimant is the exclusive owner of the Breaking Benjamin Mark, including, but not limited to, the Band name, "Breaking Benjamin";
- (d) An award to Claimant of monetary damages for the damage created by Respondents to Claimant's artistic reputation, in an amount to be determined at a hearing in this action and in no event less than \$250,000;

- (e) An Award to Claimant of interest on all monies due;
- (f) An Award of attorneys' fees pursuant to paragraph 10 of the Partnership Agreement;
- (g) An award to Claimant of his costs and disbursements incurred in this action, including his attorneys' fees incurred; and
- (h) An awarding to Claimant of such other and further relief as this tribunal may deem necessary, proper and equitable.

Dated: New York, New York
June 6, 2011

CAPLAN & ROSS, LLP

By: 

Brian D. Caplan
Jonathan J. Ross

270 Madison Avenue, 13th Floor
New York, New York 10016
(212) 973-2376
Attorneys for Claimant



EXHIBIT “A”

HOLLYWOOD RECORDS, INC.
170 Fifth Avenue
9th Floor
New York, New York 10010

Dated: As of February 26, 2002

Messrs. Benjamin Burnley and
Jeremy Hummel
currently, collectively professionally known as "Breaking Benjamin"
c/o Nick Ferrara, Esq.
Serling Rooks & Ferrara, LLP
254 West 54th Street, 14th Floor
New York, New York 10019

Gentlemen:

Attached hereto as Exhibit A is a deal memorandum (the "Deal Memo") setting forth the basic terms which have been negotiated between you and Hollywood Records, Inc. ("Hollywood") regarding your furnishing to Hollywood your exclusive recording services. Attached hereto as Exhibit B is Hollywood's standard form recording agreement (the "Basic Form"). The Basic Form, as modified and supplemented by the provisions described in the Deal Memo, shall constitute the agreement (the "Agreement") between you and Hollywood, until superceded by a more formal agreement (the "Long Form"), which you and Hollywood hereby agree expeditiously to negotiate in good faith (other than those terms set forth in the Deal Memo which are agreed upon and non-negotiable) and to execute. In the event of any direct and specific conflict between the terms set forth in the Deal Memo and those set forth in the Basic Form, the terms set forth in the Deal Memo shall control. Notwithstanding anything to the contrary contained herein, effective as of the date hereof and continuing until such time as the Long Form is fully-executed (or if such Long Form is never executed), you and Hollywood agree to be bound by the terms and conditions of this Agreement. You and Hollywood further agree that

any delay in completing the Long Form for any reason shall not in any manner impede or compromise the enforceability and effectiveness of this Agreement.

Very truly yours,

HOLLYWOOD RECORDS, INC.

By: David [Signature]

ACCEPTED AND AGREED TO:

B. Burnley
BENJAMIN BURNLEY
Soc. Sec. No. [REDACTED]
Date of Birth: [REDACTED]

Jeremy Hummel
JEREMY HUMMEL
Soc. Sec. No. [REDACTED]
Date of Birth: [REDACTED]

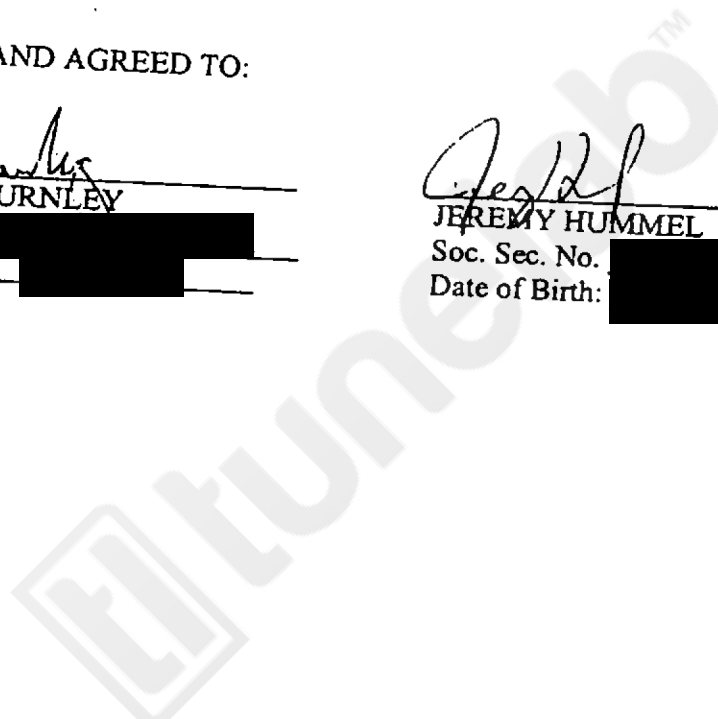


EXHIBIT A

The following sets forth the material terms for Benjamin Burnley and Jeremy Hummel (individually and collectively known as "Artist") to furnish their exclusive recording services to Hollywood Records, Inc. ("Hollywood"):

1. Territory: The universe.
2. Ownership: Hollywood will own in perpetuity in the Territory all right, title and interest, including, without limitation, the copyright, in and to all Master Recordings recorded and/or delivered by Artist during the Term, as well as those Master Recordings embodied in Artist's existing EP ("Existing EP") embodying the Controlled Compositions entitled "Home", "Medicate", "Polyamoris", "Water" and "Shallow Bay" ("Existing EP Masters"). Notwithstanding the foregoing, Artist shall have the right to sell 2,000 copies of the Existing EP and to retain all proceeds derived therefrom. During the Term, Hollywood shall not commercially exploit the Existing EP Masters without the Artist's knowledge or consent.
3. Term/Recording Commitment: 6 Albums total (2 Albums firm in the Initial Period, with Hollywood having 4 successive, irrevocable options for 1 Album each).
4. Advances/Funds:
 - (a) First Album: An "all-in" Recording Fund of \$750,000 ("First Album Fund"). \$300,000 ("Execution Advance") of the First Album Fund shall be payable to the Serling Rooks & Ferrara LLP Escrow Account (tax i.d.#: 13-3246797) promptly after the full execution of the short form agreement to which this Exhibit A is attached. The remainder of the First Album Fund, after deduction of Recording Costs paid or incurred by Hollywood through delivery and acceptance of the First Album, shall be paid to Artist promptly after the satisfactory delivery to Hollywood of the First Album.
 - (b) Albums 2 - 6: "All-in" Recording Funds based on 70% of net royalty earnings (with reserves capped at 15% solely for this purpose) on 15 months of normal retail distribution channel net sales in the United States of the immediately prior Album (or the average of the 2 immediately prior Albums, if less), subject to the following minimums and maximums:

<u>Album</u>	<u>Minimum</u>	<u>Maximum</u>
2	\$ 500,000	\$ 1,000,000
3	\$ 550,000	\$ 1,100,000
4	\$ 575,000	\$ 1,150,000
5	\$ 600,000	\$ 1,200,000
6	\$ 700,000	\$ 1,400,000

20% of the Recording Funds for Albums 2 – 4 (and 25% of the Recording Funds for Albums 5 – 6) shall be payable to Artist promptly after the commencement of recording for the applicable Album, and the remainder (less the amount of Recording Costs paid or incurred by Hollywood in connection with such Album and less any additional advance paid by Hollywood for such Album) shall be payable to Artist promptly after the satisfactory delivery to Hollywood of the Album concerned.

(c) “Pay or Play”: If Hollywood elects without cause not to record any Album for which Hollywood has contractually committed to record, Hollywood shall pay Artist, in full and complete satisfaction of all its obligations under this agreement, as an advance against royalties hereunder, a sum equal to the minimum Recording Fund for the Album(s) unrecorded during the Contract Period concerned, less Recording Costs for the immediately preceding Album (with a floor of \$275,000 -- inclusive of any monies previously paid to Artist in connection with the Second Album -- if the Second Album is unrecorded without cause during the Initial Period). Notwithstanding the foregoing, the Execution Advance payable pursuant to subparagraph 4(a) above is inclusive of any “pay or play” monies payable solely with respect to the First Album.

5. U.S. Royalty Rates (retail-related):

(a) USNRC Album Royalty Rates:

	<u>USNRC Royalty Units</u>		
	<u>1 - 500,000</u>	<u>500,001 - 1,000,000</u>	<u>1,000,001 +</u>
Albums 1 & 2	15%	15.5%	16%
Albums 3 & 4	16%	16.5%	17%
Albums 5 & 6	17%	17.5%	18%

(b) USNRC Singles Rate: 10%.

6. Foreign Royalty Rates:

- Canada: 85% of U.S. base rate.
- U.K. & Japan: 80% of U.S. base rate.
- EEC, Australia & New Zealand: 75% of U.S. base rate.
- Rest of the world: 60% of U.S. base rate.

7. (a) Third Party Royalties: the royalties set forth herein are inclusive of all third parties, including, without limitation, producers and mixers.

(b) Compact Disc Rate: 100% of base rate (U.S. royalty base is 130% of ppd).

(c) New Record Rate: 80% of base rate, with good faith renegotiation of this rate reduction at Artist's request 3 years after Hollywood's implementation of any particular type of New Record (provided such rate shall never be more than 100% of the base rate, and no

failure to complete such renegotiation shall impair Hollywood's right to exploit the New Record concerned).

(d) Net Sales: 100% of gross sales, less returns, credits and reserves.

(e) Free Goods: standard U.S. Free Goods of 15% on Albums, and Special Sales Program Free Goods capped at 10%.

8. Mechanical Royalties:

(a) Controlled Compositions: 100% of the minimum statutory rate on the date of the initial U.S. release thereof ("Controlled Rate").

(b) Maximum Ceilings: 10 times the Controlled Rate on Albums (but 11 times the Controlled Rate on Albums released in the Compact Disc format), 5 times the Controlled Rate on EPs and 2 times the Controlled Rate on Singles.

9. Creative Controls: Creative issues (i.e., selection of studios, producers, material to be recorded, video concepts, album artwork) shall be mutually determined by Artist and Hollywood.

10. Independent Marketing, Publicity and Promotion (including radio "listener appreciation shows"): 50% recoupable.

11. Deficit Tour Support: 100% recoupable. Hollywood will fund, on an approved budget basis, any deficit incurred by Artist in connection with approved live performance tours undertaken to promote Albums hereunder. Hollywood's minimum commitment for deficit tour support in connection with the First Album shall be \$200,000.

12. Videos: 50% recoupable from audio record royalties and 100% recoupable from audio-visual record royalties. Hollywood will fund the production of one music video in connection with the promotion of the First Album, pursuant to a budget reasonably approved by Hollywood.

13. Logo: Subject to Artist furnishing Hollywood with documentation reasonably substantiating Artists' rights therein, Hollywood shall include the "Now or Never" logo ("Artist's logo") on the First Album as commercially released by Hollywood on Phonograph Records in the United States. The size and placement of such logo shall be reasonably determined by Hollywood. Any inadvertent failure by Hollywood to accord such logo credit shall not be a breach of this agreement.

14. Miscellaneous: Except as otherwise set forth herein all terms used herein and defined in Exhibit B attached hereto shall have the same meaning as prescribed in Exhibit B.

HOLLYWOOD RECORDS, INC.
170 Fifth Avenue
New York, New York 10010

Dated: As of _____

_____, _____
_____, and _____
(currently collectively professionally
known as "_____")
c/o _____

Gentlemen:

The following constitutes your and our agreement ("Agreement"):

1. Services. During the term of this Agreement ("Term") you shall, in accordance with the provisions hereof, exclusively render to us your services and furnish to us the services of one (1) or more producers for the purpose of recording and delivering to us Masters.

2. Term.

(a) The Term shall consist of an "Initial Period" and of the "Renewal Periods" for which we shall have exercised the options hereafter provided. We shall have (and you hereby grant to us) _____ () separate options, each to extend the Term for a Renewal Period. The term "Contract Period" shall mean the Initial Period or any Renewal Period. Each Renewal Period is hereafter sometimes referred to respectively in chronological order as the ["First Renewal Period," "Second Renewal Period," "Third Renewal Period," "Fourth Renewal Period," "Fifth Renewal Period" and "Sixth Renewal Period."] We may exercise each option to extend the Term for a Renewal Period by giving you notice of our election to do so at any time prior to the commencement of the Renewal Period for which our option is exercised;

(b) (i) The Initial Period shall commence on the date hereof and shall continue until the date nine (9) months after the initial release in the United States of the last Album required to be delivered to us in fulfillment of your "Recording Commitment" (defined below) for the Initial Period; and

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(ii) Each Renewal Period shall run consecutively, shall commence upon the expiration of the immediately preceding Contract Period and shall continue until the date nine (9) months after the initial release in the United States of the last Album required to be delivered to us in fulfillment of your Recording Commitment for that Renewal Period; and

(c) Notwithstanding the foregoing, if as of the last date on which we have the right to extend the Term for a Renewal Period pursuant to this paragraph 2, we have failed to exercise our option to extend the Term for that Renewal Period, the then-current Contract Period nevertheless shall continue until you notify us in writing of that failure, referring specifically to this subparagraph 2(c). If we fail to exercise our option to extend the Term for the Renewal Period in question on or before the date that is ten (10) business days after we receive that specific written notice from you, then the Term shall end on the date that is ten (10) business days after we receive that notice from you, as if that date were the original expiration date of the Term, without any liability or additional obligation to you in connection therewith.

3. Recording Commitment.

(a) The term "Recording Commitment" shall mean your performance for the recording of Masters sufficient to constitute the applicable number of Albums set forth below (each a "Required Album"), and your causing those Masters to be produced and delivered to us. During each Contract Period you shall fulfill the following Recording Commitment:

<u>Contract Period</u>	<u>Number of Albums</u>
Initial Period	One (1) Album ("First Album")
First Renewal Period	One (1) Album ("Second Album")
Second Renewal Period	One (1) Album ("Third Album")
Third Renewal Period	One (1) Album ("Fourth Album")
Fourth Renewal Period	One (1) Album ("Fifth Album")
Fifth Renewal Period	One (1) Album ("Sixth Album")
Sixth Renewal Period	One (1) Album ("Seventh Album")

In addition to the foregoing and as part of your Recording Commitment, at our request during any Contract Period, you shall deliver to us two (2) GH Masters in connection with each GH Album intended to be initially released by us during the Term;

(b) You shall deliver to us the First Album no later than three (3) months after the date hereof. During each Renewal Period, you shall deliver to us the

Required Album no later than three (3) months after the commencement of the particular Renewal Period. Notwithstanding the foregoing, you shall not without our prior written consent either (A) commence the recording of any Masters for any Required Album prior to the date that is eight (8) months after the date of your delivery to us of the immediately-prior Required Album or (B) deliver to us a Required Album prior to the date that is ten (10) months after the date of your delivery to us of the immediately-prior Required Album. You shall deliver to us each GH Master within forty-five (45) days after our request therefor; and

(c) Notwithstanding anything to the contrary contained herein, you shall deliver to us each Required Album and GH Master as and when required hereunder so that all [seven (7)] Required Albums and GH Masters are delivered to us within seven (7) years after the date hereof.

4: Recording Procedures.

(a) You shall designate and submit to us for our approval all Recording Elements. You shall also prepare and submit to us for our approval a proposed budget for all Recording Costs setting forth in detail all costs and expenses to be paid or incurred for the production, recording and delivery to us of the Masters ("Recording Budget"). No recording sessions shall be commenced nor shall any commitments be made or costs incurred hereunder with respect to any Masters unless and until we shall have approved in writing each Recording Element and the Recording Budget for those Masters. If we disapprove of any Recording Element or of the Recording Budget submitted by you, you shall promptly submit one (1) or more substitute Recording Elements or a substitute Recording Budget, as applicable, but in all instances our decision (including, at our election, our designation of one (1) or more substitute Recording Elements or of a substitute Recording Budget) shall be final;

(b) As a material condition of our obligations with respect to each Master, you shall cause all producers and mixers of each Master to execute a declaration in the form attached hereto as Exhibit A prior to the time that Person commences rendering services for such Master and shall deliver all executed declarations to us as soon as possible. You shall furnish (or cause the producer of each Master to furnish) to us at such times as we shall require all union forms, session reports, invoices and other information required by us so that we promptly may pay all Recording Costs, otherwise comply with any of our obligations in connection with the Masters, release Records embodying the Masters and otherwise exploit the Masters. Promptly after our receipt of your written request therefor, we may render assistance in the completion of union forms and session reports which you are required to deliver hereunder, provided that any rendition by us of such assistance shall not relieve you of your obligations hereunder;

(c) At our election, recording sessions for the Masters shall be conducted under our or our designee's recording license;

(d) Our representatives may attend recording sessions for the Masters at our sole, non-recoupable cost (unless the representative is rendering services as a producer, mixer or engineer of the Masters, in which event the costs of such services shall constitute Recording Costs);

(e) You shall deliver to us the Masters promptly after their completion. All original session tapes and any derivatives or reproductions thereof shall be delivered to us concurrently, or, at our election and at our sole non-recoupable expense, maintained at a recording studio or other location designated by us, in our name and subject to our control. Each Master shall be subject to our approval (as determined in our reasonable business judgment) as commercially and technically satisfactory for the manufacture and sale of Records, and, upon our request, you shall re-record any Selection until a Master commercially and technically satisfactory to us (as determined in our reasonable business judgment) shall have been obtained;

(f) Each Master shall embody your vocal and instrumental performances as the sole featured artist of a single Composition not previously recorded by you and shall be newly-recorded in its entirety in a recording studio. Accordingly, no Master shall be recorded in whole or in part at a live concert or other live performance. Each Required Album shall embody Masters of no fewer than ten (10) and no more than twelve (12) different Selections unless we agree otherwise in writing. You shall not record or deliver to us nor shall we be obligated to accept as delivered to us Masters constituting a Multiple Album. If, however, you shall do so and we shall accept as delivered to us those Masters, then, at our election, for the purpose of calculating the number of Masters recorded and delivered to us hereunder, those Masters shall be deemed to constitute only one (1) Album; and

(g) The term "Sampling" shall mean the use and reproduction of Other Material in a Master which is intended to be delivered to us hereunder. The term "Other Material" shall mean a Master Recording (or the Selection recorded therein) which is owned or controlled by a Person other than you. Without limiting anything contained herein, no Master shall be deemed delivered to us hereunder unless and until you shall have obtained all consents and licenses which we deem necessary in connection with the use and reproduction of Other Material as reproduced therein (including, without limitation, written clearances or licenses for the perpetual, unrestricted right throughout the Territory to reproduce and otherwise exploit the Other Material in the Master in question and all information pertaining to credit copy required by the copyright holder(s) of the Other Material in the Master in question), all of which shall be secured prior to our authorizing the mastering of the Master in question. You shall notify us of any Sampling

and of the names and addresses of the recording artist(s), record companies, songwriters, publishers and other Persons who have any right, title or interest in and to the Other Material embodied in that Master as a result of that Sampling. As between you and us, you shall be solely responsible for and shall account for and pay to the Persons that own or control Other Material all monies to which those Persons are entitled as a result of the Sampling of any Other Material in any Master. No royalties, advances or other money shall be earned by or payable to you hereunder in connection with any Master containing Other Material unless and until we obtain documentation reasonably satisfactory to us to effectuate the foregoing. Nothing contained in the foregoing shall limit or waive any of your warranties, representations or indemnities hereunder.

5. Recording Costs. We shall pay the Recording Costs of those Masters recorded at recording sessions conducted in accordance with the terms hereof in an amount not in excess of the Recording Budget therefor designated by us or approved by us in writing. Recording Costs shall be recoupable from royalties earned by you hereunder.

6. Rights.

(a) All Masters, from the inception of the recording thereof, and all artwork and photographs created for use in connection with any reproduction thereof ("Artwork"), shall be deemed, for purposes of copyright law throughout the Territory, works made for hire by you and all other Persons rendering services in connection with those Masters and Artwork, specially ordered or commissioned by us for use as a contribution to a collective work or compilation. Those Masters, from the inception of the recording thereof, and all Records and other reproductions made therefrom, together with the performances embodied therein and all copyrights therein and thereto and all renewals and extensions thereof, and all Artwork and all copyrights in and to all Artwork and all renewals and extensions thereof, shall be entirely our property throughout the Territory, free of any claims whatsoever by you or any other Person. Accordingly, we shall have the exclusive right to obtain registration of copyright (and all renewals and extensions) throughout the Territory in those Masters and Artwork in our name, as the owner and author thereof. If for any reason we shall be deemed not to be the author of any of those Masters or Artwork, this Agreement shall constitute an irrevocable transfer to us of ownership of copyright for the duration thereof (and all renewals and extensions thereof) throughout the Territory in those Masters or Artwork (as applicable) and, accordingly, you hereby grant, transfer, convey and assign directly to us the entire right, title and interest throughout the Territory, including, without limitation, the copyright, the right to secure copyright registration and any and all copyright renewal rights, in and to all Masters and Artwork. You hereby irrevocably assign to us (and to the extent such assignment is invalid or unenforceable, you hereby irrevocably waive the enforcement of) all rights of "droit moral" or "moral rights of authors" or similar rights throughout the Territory which you now or may hereafter have in and to the Masters and/or Artwork, all

to the extent permitted under applicable law;

(b) You shall, upon our request, cause to be executed and delivered to us transfers of ownership of copyright (and all renewals and extensions) in the Masters and Artwork and any other documents we deem necessary to vest in us the rights granted to us in this Agreement, and you hereby irrevocably appoint us your attorney-in-fact for the purpose of executing those transfers of ownership and other documents in your names, and we shall be entitled to so execute such documents if you fail to do so within ten (10) business days after our request therefor;

(c) Without limiting the generality of the foregoing, we and any Person designated by us shall have the exclusive, perpetual right throughout the Territory to manufacture, sell, distribute, transmit and/or advertise Records and other reproductions embodying the Masters under any trademarks, trade names or labels, and to license, convey and otherwise exploit and use the Masters by any method (whether now known or unknown) and in any medium (whether now known or unknown) and to perform publicly the Masters and/or Records embodying any Masters, all upon such terms as we may approve, or we may refrain from doing any or all of the foregoing;

(d) If you are entitled to any reversion of the copyright or other right, title and interest in and to any Master pursuant to the laws of the United States or any other country of the Territory, and that reversion is effected, then you hereby irrevocably license to us exclusively the entire right, title and interest throughout the Territory, for the duration of the copyright (and any renewals or extensions thereof) in and to such Master ("License Period"), including, without limitation, all of the exclusive rights set forth in subparagraph 6(c) above throughout the Territory during the License Period. In consideration of the foregoing license, we shall credit your royalty account hereunder royalties at the rates and on the terms set forth in this Agreement for exploitations of the Masters occurring during the License Period;

(e) (i) We and any Person designated by us shall have the perpetual right throughout the Territory to use and to permit other Persons to use your Name, likeness, any other identification utilized by you, biographical material concerning you, and the name and likeness of any producer rendering services in connection with Masters for purposes of trade and advertising in connection with any reproduction or exploitation of one (1) or more Masters and our and our Licensees' institutional advertising. We shall have the right to refer to you during the Term as our exclusive recording artist, and you, in your activities in the entertainment field, shall use reasonable efforts to be billed and advertised during the Term as our exclusive recording artist. The rights granted to us pursuant to this subparagraph shall be exclusive during the Term (except with respect to the use of the name or likeness of any producer rendering services in

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connection with the Masters) and nonexclusive thereafter. Notwithstanding anything to the contrary contained herein, during the Term, you shall not use any name other than the professional name utilized by you as of the date of this Agreement without first obtaining our prior written consent thereto (which consent we shall not unreasonably withhold). For the avoidance of doubt, no so-called commercial "merchandise rights" are granted to us hereunder to use your Name or likeness other than in connection with the promotion or exploitation of Records hereunder and in institutional advertising; and

(ii) During the Term, you shall submit to us or we shall make available to you at our offices for your inspection, likenesses of and biographies concerning you for use in connection with the exploitation of Masters. We shall not use any likeness of or biography concerning you in connection with our exploitation of Masters unless that item has been approved by you or submitted by you. If you fail to submit to us sufficient likenesses and/or biographies for our use, or if you fail to notify us of your objection to any likeness or biography within ten (10) business days after we have made them available to you for your inspection, we shall be free to utilize such likeness and/or biography as we shall reasonably require in connection with our exploitation of Masters;

(f) (i) You hereby irrevocably grant to us throughout the Territory until the date which is the later of (A) the end of the Term, and (B) nine (9) months after the date of the initial United States release of the last Album of the Recording Commitment for the last Contract Period hereunder (the "Domain Name License Period"), (1) the exclusive right, privilege and license to use your Name and all variations thereof as all or part of one (1) or more universal resource locators (or URLs) or other addresses, domain names or directions to websites (i.e., Internet sites on the world-wide web or any other location on any successor to the Internet or on or in any similar or dissimilar medium of communication accessible to consumers or businesses) (each, an "Artist Domain Name"), and (2) the non-exclusive right to register and maintain in your name, each Artist Domain Name. We may sign in your name such documents as are reasonably necessary to register and maintain in your name each such Artist Domain Name if you fail to do so within ten (10) business days after our request therefor, and you each hereby appoint us as your agent and attorney-in-fact for such purpose. Promptly after your written request therefor, we shall provide to you copies of any such documents so signed in your name within a reasonable time following the execution by us thereof. For the avoidance of doubt, as between us and you, we shall not have any ownership interest in any Artist Domain Name, our interest being solely that of an exclusive licensee thereof in accordance with the terms hereof. Following the Domain Name License Period, we shall have no right under this Agreement to use your Name as an Artist Domain Name; except that, for the

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avoidance of doubt, we shall have the perpetual right throughout the Territory to use your Name as Artist Domain Name subdirectories (e.g., "hollywoodrecords.com/[name of group]") in connection with Records hereunder. Promptly following the Domain Name License Period, upon your written request therefor, we will execute and deliver to you such documents regarding your rights in and to any Artist Domain Names registered by us hereunder as you may reasonably request to carry out the purposes of this Agreement. Notwithstanding the foregoing, during the Domain Name License Period, you shall have the non-exclusive right to register one (1) Artist Domain Names, subject to the rights granted to us hereunder and the terms and conditions set forth below;

(ii) You hereby irrevocably grant to us throughout the Territory the exclusive right during the Term to create, maintain and host one (1) or more Sites. You hereby irrevocably grant to us throughout the Territory the non-exclusive right after the Term to create, maintain and host one (1) Site, but only in connection with Records hereunder. We shall own exclusively (and you hereby irrevocably grant to us the exclusive ownership of) all Sites created during the Term, and all materials embodied therein, throughout the Territory in perpetuity. During the Term, all creative visual elements embodied in each Site shall be subject to your and our mutual approval, but all Artwork or other materials furnished or approved by you for any purpose under this Agreement shall be deemed approved by you. We shall otherwise control all aspects of the operation of each Site (including, without limitation, all commerce conducted thereon, if any), and shall be the sole owner of all results and proceeds derived therefrom (for the avoidance of doubt, subject to our obligations to account and pay royalties to you with respect to the sale or other exploitation of Masters as provided in paragraphs 9 and 11 hereof). We shall have the unrestricted perpetual right throughout the Territory to establish links to and from each Site to and from our and/or our affiliates' and Licensees' websites or other properties. During the Term, we shall have the exclusive right throughout the Territory to designate any Site as your "official" website, and during the Term neither you nor any Person deriving any rights from you shall designate any other website as your "official" website. After the Term, we shall have no right to designate any website as your "official" website;

(iii) Notwithstanding anything to the contrary contained in subparagraphs 6(f)(i) or 6(f)(ii) above, you shall have the right to use one (1) Artist Domain Name, and to create, host and maintain one (1) website located at the Artist Domain Name. For the avoidance of doubt, the contents of each such website shall not be subject to our approval, but each such website shall not contain any material which is derogatory to us or our affiliates or Licensees, or

you, and in no event shall any such website in any way relate to Records (including, without limitation, to your professional activities in the music industry which relate to Records, or to goods or services related to you or to your professional activities in the music industry which relate to Records; provided that the incidental mention on such website of Records solely embodying Masters shall not be deemed a breach hereof). For the avoidance of doubt, neither you nor any Person deriving any rights from you shall use, authorize, or endorse any such website as your "official" website. We shall have the right to require you, in our sole discretion, to include on any such website one (1) or more reasonably prominent links from any such website to and from our and/or our affiliates' and Licensees' websites (including, without limitation, any Site) or other properties (and we shall have the right, in our sole discretion, to include on any of our and/or our affiliates' and Licensees' websites [including, without limitation, any Site] or other properties a reasonably prominent link to any such website); and

(iv) You agree that each of you will retain in confidence the terms of this subparagraph 6(f), and that hereafter, you shall not disclose any information concerning this subparagraph 6(f) to any Person except each of your respective tax, financial and/or legal advisors who shall be similarly bound, or unless required by law or legal process;

(g) We shall have the right, at our election, to cause a search to be instituted to determine whether there have been any third Person uses of any names used by you for Record purposes. We shall not undertake any such search if you provide us with evidence of a search undertaken by you (provided such search is professional and comprehensive). Further, we shall have the right, at our election, to apply for registration of your name to be made in your favor for Record and/or other entertainment purposes in the United States Patent and Trademark Office or such other government institution throughout the Territory as may then be charged with accepting those registrations. We shall not undertake any such registration if you provide us with evidence of such registration. Any amounts paid by us in connection with any search or registration shall be recoupable from royalties earned by you hereunder. If any search undertaken by us indicates or leads us reasonably to believe that your name should not be used hereunder or if we determine that your name will not be acceptable to us or our corporate parent, then you and we shall determine mutually a substitute name to be used by you. Nothing contained herein shall release you from your indemnification of us in respect of our use of any of your names, whether legal or professional or otherwise;

(h) Notwithstanding anything to the contrary contained herein, provided you are not in default of any of your material obligations pursuant to this Agreement:

(i) We shall not without your consent sell or authorize the sale of Premiums embodying Masters;

(ii) We shall not without your consent release Phonograph Records embodying any so-called "outtakes";

(iii) Provided you are reasonably available therefor, we shall consult with you with respect to the Masters to be embodied on the so-called "A-side" of Singles to be commercially released by us during the Term. Our inadvertent failure to so consult with you shall not constitute a breach of this Agreement;

(iv) The Masters to be embodied in each GH Album to be released by us during the Term shall be determined mutually by you and us. Any Master which is embodied on the so-called "A-side" of a Single released by us during the Term which has ever been listed among the top one hundred (100) positions on the Billboard chart currently entitled "The Billboard Hot 100" (or its successor chart) is hereby deemed approved by you for use on a GH Album. If you and we cannot mutually determine the Masters to be embodied on a GH Album, then the Masters shall be alternately selected by you and us (with you choosing first) until the total number of Masters for that GH Album (as determined by us) has been selected;

(v) During the Term, or after the Term at a time that your royalty account hereunder reflects that all advances and other charges against royalties hereunder have been recouped from royalties earned by you hereunder, we shall not without your consent license any Master to any unaffiliated third Person for use in a theatrical motion picture, television program or commercial advertisement (other than (A) a commercial advertisement for any Record embodying a Master, for any radio station or television station the programming of which consists at least in part of musical material or for any other retail outlet or service which sells or exploits Records, and (B) institutional advertising);

(vi) We shall not, during the Term, or after the Term at a time that your royalty account hereunder reflects that all advances and other charges against royalties hereunder have been recouped from royalties earned by you hereunder, without your consent, embody Masters together with other Master Recordings on Phonograph Records, except that we shall have the right to: (A) couple Masters together with other Master Recordings on no more than three (3) different Albums initially released during each calendar year period; (B) couple Masters on promotional Records; (C) couple Masters on Records distributed for use primarily in means of transportation or jukeboxes; (D) authorize consumer

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compilations (i.e., Records embodying Masters together with other Master Recordings that are selected and/or sequenced by the consumer) and (E) couple Masters on so-called "sampler" Records;

(vii) We shall not, without your consent, authorize the sale of any Phonograph Record of a Required Album hereunder to be sold through mail order Phonograph Record clubs by a third Person (i.e., Columbia House or BMG Direct) ("Club Licensee") prior to the date three (3) months after the initial release of that Required Album in the United States;

(viii) We shall not without your consent commercially release more than one (1) GH Album during the Term and one (1) GH Album after the Term; and

(ix) We shall not remix, edit or materially alter (other than for promotional purposes), without your consent, any Master after that Master is satisfactorily delivered to us in accordance with the terms hereof (and you and we shall mutually approve any remixer engaged to remix a Master for promotional purposes after that Master is satisfactorily delivered to us). The foregoing provisions of this subparagraph shall not apply with respect to any remixing, editing or material alterations required for the purpose of equalizing the running time of a particular Record configuration; and

(i) The restrictions and approval rights set forth in subparagraphs 6(e)(ii) and (h)(iii)-(viii) above shall apply only in the United States. We shall use our reasonable efforts to notify our Licensees outside the United States of the provisions of subparagraphs 6(e)(ii) and (h) above. Our inadvertent failure to so notify any such Licensee of any one (1) or more of those provisions shall not constitute a breach of this Agreement. Promptly after our receipt of your notice that any of our Licensees outside the United States has failed to comply with any one (1) or more of those provisions, we shall use our reasonable efforts to cause such Licensee(s) to cure prospectively the failure concerned. We shall not be in breach of this Agreement as the result of any failure of any Licensee to comply with any provision of subparagraph 6(e)(ii) or 6(h) above.

7. Marketing and Promotion.

(a) Upon our request (and subject to your previously-scheduled professional commitments of which we have been advised, but in any event at regular intervals), you shall render services at such times and places as we may reasonably designate for the purpose of assisting us in the marketing, advertising or promotion of Records hereunder. Among those services are engaging in interviews, participating in press conferences, posing at photography sessions and appearing on television, radio and

on-line "chat" shows. We shall pay (or reimburse you if you have paid) for the reasonable costs of travel and accommodations in connection with your services pursuant to this subparagraph, but you shall not pay or incur any costs or expenses in connection with your services pursuant to this subparagraph which are to be paid or reimbursed by us unless you and we mutually agree in writing on the nature and extent of those costs and expenses. Any costs paid or incurred by us pursuant to this subparagraph shall not be recoupable from monies payable to you hereunder;

(b) Fifty percent (50%) of amounts paid or incurred by us for the services of third Persons to market, publicize and/or promote Records embodying Masters (including, without limitation, costs incurred in connection with radio "listener appreciation shows"), shall be recoupable from royalties earned by you hereunder; and

(c) One hundred percent (100%) of all monies paid or incurred by us pursuant to this subparagraph, or any other "tour support" monies paid or incurred by us, shall be recoupable by us from royalties earned by you under this Agreement.

8. Advances. We shall pay to you as advances recoupable from royalties earned by you hereunder the following amounts at the following times (and all advances paid to you pursuant to this paragraph 8 shall be deemed specifically to include all union session scale payments which may be required to be made to you or any other Person pursuant to the terms of any applicable union agreements, and you agree to complete any documentation required by any applicable union or which may otherwise be necessary for us to fulfill our obligations with respect thereto):

(a) For the First Album: _____ Dollars (\$ _____), payable promptly after the execution of this Agreement ("Execution Advance") and the "Fund Balance" (defined below), payable promptly after the "Delivery Date" (defined below) for the First Album. For each Required Album other than the First Album: (i) the "Pre-Delivery Payment" (defined below), payable promptly after the later of (A) the commencement of recording sessions for the Required Album in accordance with the provisions hereof, and (B) our receipt of your notice indicating that recording sessions for the Required Album for which the advance is payable have actually commenced in accordance with the provisions of subparagraph 4(a) above; and (ii) the Fund Balance, payable promptly after the Delivery Date of the Required Album in question;

(b) For each Required Album after the First Album, the Recording Fund shall be the "Formula Amount" (defined below), but no less than the "Minimum Amount" and no more than the "Maximum Amount" set forth below:

Required Album Minimum Amount Maximum Amount

Second Album
Third Album
Fourth Album
Fifth Album
Sixth Album
Seventh Album

The "Formula Amount" for the Second Album shall mean an amount equal to two-thirds (2/3) of the royalties (after retention of reserves which, solely for purposes of calculating the Formula Amount, shall not exceed fifteen percent [15%] of those royalties) earned by you hereunder from USNRC Net Sales of the First Album (including our good-faith estimate of that portion of those royalties theretofore actually Received and required to be credited to your account as of that date but not yet so credited), computed as of the end of its "Fund Calculation Period" (defined below). The "Formula Amount" for each Album after the Second Album shall mean an amount equal to the lesser of (i) Qualifying Royalties from the Required Album initially released immediately prior to the Required Album for which the Formula Amount is being calculated and (ii) the average Qualifying Royalties from the two (2) Required Albums initially released immediately prior to the Required Album for which the Formula Amount is being calculated. The term "Qualifying Royalties" shall mean two-thirds (2/3) of the royalties (after retention of reserves which, solely for purposes of calculating the Formula Amount, shall not exceed fifteen percent [15%] of those royalties) earned by you hereunder from USNRC Net Sales of the Required Album in question (including our good-faith estimate of that portion of those royalties theretofore actually Received by us and required to be credited to your account as of that date but not yet so credited), computed as of the end of its Fund Calculation Period. The term "Fund Calculation Period" shall mean the period commencing on the date of the initial commercial release in the United States of the Required Album for which royalty earnings are being computed and ending on the date twelve (12) months thereafter. If any Required Album is not delivered to us within ninety (90) days after the time prescribed in subparagraph 3(b) above ("Cure Period"), then, without limiting our other rights or remedies in that event, the Recording Fund for that Required Album shall be reduced by an amount equal to five percent (5%) thereof for every month (or partial month) after the Cure Period during which that Required Album is not delivered but in no event shall the Recording Fund in question be reduced to less than the applicable Minimum Amount specified above; and

(c) The term "Pre-Delivery Payment" shall mean an amount equal to fifteen percent (15%) of the "Minimum Amount" for the applicable Required Album. The term "Fund Balance" shall mean the amount by which the Recording Fund exceeds the aggregate of the Recording Costs for the applicable Required Album, the Pre-Delivery

Payment for the applicable Required Album (or the Execution Advance with respect to the First Album) and any other advances paid in connection with the applicable Required Album. The term "Delivery Date" shall mean the later of the date of your delivery to us of all Masters constituting the applicable Required Album in accordance with all of the terms of this Agreement and the date on which we determine the aggregate Recording Costs for that Required Album.

9 Royalties.

(a) On Net Sales of Records embodying Masters, we shall accrue to your royalty account a royalty computed by multiplying the applicable Royalty Base Price, less the deductions hereafter provided, by the applicable royalty rate set forth below (subject to all of the other adjustments set forth in this Agreement):

(i) The royalty rate in respect of USNRC Net Sales of Records ("Basic U.S. Rate") consisting entirely of Masters made hereunder during the applicable Contract Period specified below shall be as follows:

<u>Type of Record</u>	<u>Contract Period</u>	<u>Basic U.S. Rate</u>
Album	Initial Period	____%
Album	First Renewal Period	____%
Album	Second Renewal Period	____%
Album	Third Renewal Period	____%
Album	Fourth Renewal Period	____%
Album	Fifth Renewal Period	____%
Album	Sixth Renewal Period	____%
Compilation Album	Any	12%
Single	Any	____%
Long-Play Single	Any	____%
EP	Any	____%
Audio-Visual Record	Any	15%

(ii) The royalty rate in respect of USNRC Net Sales of each Required Album in excess of the following number of units shall be the applicable rate set forth below ("Escalated U.S. Rate"):

<u>Album</u>	<u>USNRC Net Sales units</u>	<u>Escalated U.S. Rate</u>
First Album	500,000	____%
First Album	1,000,000	____%
Second Album	500,000	____%

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Second Album	1,000,000	_____ %
Third Album	500,000	_____ %
Third Album	1,000,000	_____ %
Fourth Album	500,000	_____ %
Fourth Album	1,000,000	_____ %
Fifth Album	500,000	_____ %
Fifth Album	1,000,000	_____ %
Sixth Album	500,000	_____ %
Sixth Album	1,000,000	_____ %
Seventh Album	500,000	_____ %
Seventh Album	1,000,000	_____ %

The Escalated U.S. Rate shall not be used in calculating any royalty rate pursuant to this Agreement other than those rates specifically set forth in this subparagraph (ii);

(iii) The royalty rate on Net Sales of Records (other than Audio-Visual Records) sold to consumers outside of the United States by us or by our principal Licensee in the country concerned ("Foreign Rate") shall be the applicable percentage of the Basic U.S. Rate set forth below:

<u>Country</u>	<u>Percentage of Basic U.S. Rate</u>
Canada	85%
U.K, Austria, Belgium, Denmark, France, Italy, Luxembourg, Netherlands, Portugal, Spain, Switzerland, Germany, Australia, Japan or New Zealand	75%
Rest of Territory	50%

For purposes of this subparagraph (a)(iii), in no event, however, shall your royalty in respect of those sales exceed an amount equal to fifty percent (50%) of Net Receipts from the sale of those Records; and

(iv) The royalty rate on Net Sales of Audio-Visual Records sold to consumers by us or by our principal Licensee in Canada shall be fifteen percent (15%) and sold to consumers by us or our principal Licensees in the Territory outside of the United States and Canada shall be twelve percent (12%). In no event, however, shall your royalty in respect of those sales exceed an amount equal to fifty percent (50%) of Net Receipts from the sale of those Records;

(b) Notwithstanding the foregoing:

(i) (A) On Records sold through a direct mail or mail order distribution method (including, without limitation, through so-called "record clubs") the royalty rate shall be one-half ($\frac{1}{2}$) of the otherwise applicable royalty rate, but in no event shall your royalty in respect of those sales exceed an amount equal to fifty percent (50%) of Net Receipts from the sale of those Records; and

(B) On Records sold through the use of special television advertisement campaigns ("TV Ad Campaign") the royalty rate payable with respect to such Records in the territory of the TV Ad Campaign concerned shall be one-half ($\frac{1}{2}$) of the otherwise applicable royalty rate for sales occurring during the Relevant Periods. The term "Relevant Periods" shall mean all semi-annual accounting periods during which the TV Ad Campaign is running, and the semi-annual accounting period immediately following the semi-annual accounting period during which the TV Ad Campaign ends. In no event, however, shall your royalty in respect of those sales exceed an amount equal to fifty percent (50%) of Net Receipts from the sale of those Records. Notwithstanding the foregoing, the reduction of your royalty calculated in accordance with the foregoing provisions of this subparagraph (B) shall not exceed an amount equal to fifty percent (50%) of the total costs paid or incurred by us or our Licensee in connection with the TV Ad Campaign in question. If the costs paid or incurred by us or our Licensee in connection with a particular TV Ad Campaign are paid or incurred for Records embodying Masters and for Records embodying Master Recordings other than Masters, then we shall apportion the costs of that TV Ad Campaign to Records embodying Masters in our good faith reasonable business judgment;

(ii) On Premiums the royalty rate shall be one-half ($\frac{1}{2}$) of the otherwise applicable royalty rate;

(iii) (A) On Mid-Price Records the royalty rate shall be three-fourths ($\frac{3}{4}$) of the otherwise applicable royalty rate, and on Budget Records the royalty rate shall be one-half ($\frac{1}{2}$) of the otherwise applicable royalty rate;

(B) Notwithstanding the foregoing, we shall not, during the Term without your consent, reduce the royalty rate specified in subparagraph 9(a)(i) above on USNRC Net Sales of a Required Album

solely because we sell that Required Album on Phonograph Records as a Mid-Price Record prior to the date that is twelve (12) months after the date of the initial release of that Required Album through normal retail distribution channels in the United States. Further, we shall not, during the Term without your consent, reduce the royalty rate specified in subparagraph 9(a)(i) above on USNRC Net Sales of a Required Album solely because we sell that Required Album on Phonograph Records as a Budget Record prior to the date that is eighteen (18) months after the date of the initial release of that Required Album through normal retail distribution channels in the United States; and

(C) The term "Developing Artist Series" shall mean a program pursuant to which we initially release through normal retail ~~distribution channels in the United States at a price equivalent to a~~ Mid-Price Record or a Budget Record new Albums delivered to us by one (1) or more artists. Notwithstanding the provisions of subparagraph 9(b)(iii)(B) above, we shall have the right to apply the provisions of subparagraph 9(b)(iii)(A) above to any Album embodying one (1) or more Masters released by us as part of a Developing Artist Series;

(iv) On Records sold to the United States government, its subdivisions, departments or agencies (other than Records sold for resale through military facilities) or to educational institutions or libraries, the royalty rate shall be one-half ($\frac{1}{2}$) of the otherwise applicable royalty rate, and on Records sold for resale through military facilities the royalty rate shall be three-fourths ($\frac{3}{4}$) of the otherwise applicable royalty rate;

(v) On a Multiple Album the royalty rate shall be the lesser of: (A) the otherwise applicable royalty rate and (B) the otherwise applicable royalty rate multiplied by a fraction, the numerator of which is the Royalty Base Price of the Multiple Album and the denominator of which is the product of (1) the Royalty Base Price of one (1) Album in the configuration in question (in the same price category as the Multiple Album in question) and (2) the number of Albums constituting the Multiple Album in question;

(vi) On Compact Discs the royalty rate shall be one hundred percent (100%) of the otherwise applicable royalty rate;

(vii) (A) On New Records the royalty rate shall be eighty percent (80%) ("Percentage Reduction") of the otherwise applicable royalty rate, but if those New Records are licensed by us to a third Person for that Person's exploitation of New Records, then your royalty shall be

the lesser of the royalty determined by applying the foregoing provisions of this subparagraph (vii)(A) and fifty percent (50%) of Net Receipts from the exploitation of those New Records; and

(B) Notwithstanding the foregoing, promptly after our receipt of your written request therefor (which request shall not be made prior to the date that is three (3) years after our initial commercial release in the United States of any Required Album in a particular New Record configuration and shall not be made more than once at any time with respect to any particular New Record configuration), we shall consider in good faith (based on our then-current general policies) your request that we negotiate with you the Percentage Reduction under subparagraph 9(b)(vii)(A) above (as opposed to the method of calculating the royalty for sales of New Records in that particular configuration hereunder. Pending the outcome of those good faith negotiations, the Percentage Reduction set forth in subparagraph 9(b)(vii)(A) above shall continue to apply and we shall continue to have the right to manufacture and distribute those New Records. Further, we shall have no obligation to consider any request made by you that the Percentage Reduction for sales of New Records in any configuration exceed one hundred percent (100%). No failure to negotiate or complete such negotiations shall impair or otherwise restrict our right to exploit any Album or other Record in the New Record format in question; and

(viii) On any Master licensed by us to a Person (other than our principal Licensee in the country concerned in respect of Records controlled by us and distributed on our behalf by that Licensee in the regular course of business) for that Person's use (A) in the manufacture and/or distribution of Phonograph Records; (B) in synchronization with the soundtrack of a theatrical motion picture, television program or radio or television commercial advertisement, or (C) in any manner which is not specifically addressed elsewhere in this paragraph 9, we shall credit to your royalty account an amount equal to fifty percent (50%) of Net Receipts;

(c) Notwithstanding the foregoing:

(i) (A) No royalties shall be payable on Records furnished as free or bonus Records to members, applicants or other participants in any record club or other direct mail distribution method; on Records distributed for promotional purposes to radio stations, television stations or networks, record reviewers, or other recipients of promotional Records; on so-called "promotional sampler" Records; on Records sold as scrap or

as "cut-outs"; on Records distributed in any portion of the Territory in which the Masters embodied in those Records are in the public domain; on Records (whether or not intended for sale by the recipient) furnished on a no-charge or free basis ("Free Goods") or sold at less than fifty percent (50%) of their regular wholesale price to distributors, subdistributors, dealers or other Persons, whether or not the recipients thereof are affiliated with us; on Records distributed at no charge to our employees or Licensees; or on Records distributed for use in jukeboxes (including, without limitation, "video jukeboxes"). Without limiting the foregoing, fifteen percent (15%) of the units of each Album placed in commerce for sale to the ultimate consumer shall be deemed Free Goods. In addition, Free Goods shall include up to ten percent (10%) of all units of any Album furnished by us or any Licensee at no charge for sale by the recipient thereof in connection with short-term or other special sales programs ("Special Sales Program"). If a particular Special Sales Program furnishes units at a discount from the regular wholesale price rather than at no charge ("Discount Units"), then the number of Discount Units which constitute Free Goods shall be determined by multiplying the number of Discount Units so distributed by the percentage of the discount; and

(B) If (1) the aggregate of our Phonograph Records (including Phonograph Records hereunder) distributed in the United States as "free" or "bonus" Phonograph Records pursuant to our agreement with any Club Licensee or affiliate distributing Phonograph Records hereunder in the United States shall exceed the aggregate of our Phonograph Records (including Phonograph Records hereunder) sold thereunder, and (2) the number of Phonograph Records hereunder distributed in the United States by that Club Licensee or affiliate as "free" or "bonus" Phonograph Records shall exceed the number of Phonograph Records hereunder sold by that Club Licensee or affiliate in the United States (those excess Phonograph Records being referred to below as "excess club Phonograph Records hereunder"), then we shall credit your royalty account hereunder with that portion of the adjusting royalty payment, if any, made by that Club Licensee or affiliate to us in respect thereof to be determined by multiplying fifty percent (50%) of that adjusting royalty payment by a fraction, the numerator of which is the number of excess club Phonograph Records hereunder and the denominator of which is the aggregate of the number of excess club Phonograph Records, if any, for each of our artists (including the number of excess club Phonograph Records hereunder). Notwithstanding the foregoing, we shall have no obligation to make any payments to you pursuant to the provisions of this subparagraph unless our agreement with our Club Licensee or affiliate provides that we shall

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receive an adjusting royalty payment in accordance with the foregoing provisions of this subparagraph 9(c)(i)(B), and we shall have no obligation to cause our agreement with our Club Licensee or affiliate to contain any such provisions;

(ii) Records distributed in the United States by any of our affiliated branch wholesalers shall be deemed sold for the purposes of this Agreement only if sold by that affiliated branch wholesaler to one of its independent third Person customers;

(iii) (A) The royalty payable to you hereunder on a Record or other device embodying Masters together with other Master Recordings shall be computed by multiplying the otherwise applicable royalty rate by the "Reduction Factor." In connection with Records embodying sound only, the term "Reduction Factor" shall mean a fraction, the numerator of which shall be the number of Selections contained on the Masters which are embodied on that Record and the denominator of which shall be the total number of royalty-bearing Selections embodied on that Record. In connection with any other Records or other devices, the term "Reduction Factor" shall mean a fraction, the numerator of which shall be the playing time of the Selections contained on the Masters which are embodied on that Record or other device and the denominator of which shall be the total playing time of that Record or other device. For any Record or other device for which a finite running or playing time does not exist, the running or playing time of that Record or other device shall be deemed to be one hundred twenty (120) minutes; and

(B) On GH Albums, the royalty rate payable to you hereunder on USNRC Net Sales of a particular Master hereunder (other than a GH Master) embodied on a GH Album shall be the royalty rate applicable to that Master as embodied on the first Required Album in which that particular Master is initially commercially exploited and at the highest applicable royalty rate achieved by that Required Album in which the Master is initially commercially exploited as of the end of the semiannual accounting period immediately preceding the semiannual accounting period during which that GH Album is initially commercially released in the United States, multiplied by a fraction the numerator of which is one (1) and the denominator of which is the aggregate number of Master Recordings (including GH Masters) embodied in the GH Album in question. The royalty rate payable to you hereunder on USNRC Net Sales of a particular GH Master embodied on a GH Album shall equal the average royalty rate applicable to the Masters embodied on the GH Album

which are not the GH Masters, multiplied by a fraction the numerator of which is one (1) and the denominator of which is the aggregate number of Master Recordings (including GH Masters) embodied in the GH Album in question. The royalty rate on a particular Master (including any GH Masters) embodied in a GH Album shall otherwise be prorated, calculated, proportionately reduced, adjusted and paid on the same percentage of Net Sales as your royalty rate on reproductions and exploitations of Masters generally is prorated, calculated, proportionately reduced, adjusted and paid in accordance with the provisions of this Agreement; and

(iv) The royalty payable to you hereunder and the Recording Costs on a Master embodying your performances jointly with any other artist or musician to whom we are obligated to pay a royalty in respect of that Master ("Joint Recording") shall be computed by multiplying the otherwise applicable royalty rate and Recording Costs by a fraction, the numerator of which shall be one (1) and the denominator of which shall be the sum of one (1) and the total number of other Persons whose performances are embodied on that Joint Recording to whom we are obligated to pay a royalty in respect of that Joint Recording, it being understood that for purposes of this subparagraph (iv), any group artist shall be deemed to be one (1) Person; and

(d) You hereby authorize us and our Licensees to collect and receive on your behalf any monies payable in the United States pursuant to the Audio Home Recording Act allocable to featured performers and otherwise determined to be payable to you in respect of your performances in Masters ("AHRA Monies") and monies payable with respect to the public performance of the Masters in the United States pursuant to any governmental legislation and/or society agreements throughout the Territory ("Public Performance Monies"). We shall credit to your royalty account hereunder an amount equal to fifty percent (50%) of that portion of AHRA Monies and Public Performance Monies Received and specifically allocable to Masters (less any portion thereof which may be payable to any third Person, including, without limitation, any producer of Masters). You shall execute any further documentation which we reasonably deem necessary to effectuate the foregoing provisions of this subparagraph. You shall not have the right hereunder or otherwise to be paid or to have credited to your account any portion of Public Performance Monies or AHRA Monies if such monies are allocable to the owner of the sound recording copyright.

10 Royalty Payments and Accountings.

(a) We shall send you statements for royalties payable hereunder on or before the date ninety (90) days after the end of each of our then-current semi-annual accounting periods (currently ending on June 30 and December 31), together with

payment of royalties, if any, earned by you hereunder during the semi-annual period for which the statement is rendered (based on monies Received during the accounting period for which the statement is rendered [each, an "Accounting Period"]), less all advances and charges against royalties under this Agreement paid or incurred during or prior to the Accounting Period in question unless paid or incurred after the Accounting Period in question (i) at your request (in which case such advances and charges shall be deducted from royalties earned during such Accounting Period), or (ii) for any reason which you could have reasonably avoided. We shall have the right to retain, as a reserve against charges, credits or returns, such portion of payable royalties as shall be reasonable in our best business judgment. Notwithstanding the foregoing, we shall not retain a reserve in excess of thirty-five percent (35%) of royalties otherwise accrued to your royalty account hereunder with respect to any particular Accounting Period. We shall liquidate each reserve ratably over the four (4) Accounting Periods after the Accounting Period in which the reserve was initially retained. (Any Accounting Period in which returns exceed shipments of Phonograph Records hereunder shall not be deemed to be one [1] of those four [4] Accounting Periods by the end of which a particular reserve must be liquidated.) Returns of Records in the United States shall be pro-rated between Records sold for which a Record royalty is payable hereunder and Records distributed on a "no-charge" or Free Goods basis for which no Record royalty is payable in the same proportion that those Records are initially invoiced. You shall reimburse us on demand for any overpayments, and we may also deduct the amount thereof from any monies payable hereunder. Royalties paid by us on Records subsequently returned shall be deemed overpayments;

(b) No royalties shall be payable to you on sales of Records or other exploitations of Masters by any of our Licensees until payment on those sales or other exploitations has been Received. Sales or other exploitations by a Licensee shall be deemed to have occurred in the Accounting Period during which we shall have Received accounting statements and payments from that Licensee;

(c) (i) Royalties on exploitations of Masters outside of the United States shall be computed in the currency in which a Licensee pays us, shall be credited to your royalty account hereunder at the same rate of exchange at which a Licensee pays us, and shall be proportionally subject to any foreign withholding or comparable taxes imposed upon our receipts; and

(ii) If we shall not receive payment in United States dollars in the United States for any exploitations of Masters outside of the United States, royalties on those exploitations shall not be credited to your royalty account hereunder. If all advances and other recoupable charges under this Agreement are then-currently recouped and if we are able to do so, we shall accept payment for those exploitations in foreign currency and shall deposit in a foreign bank or other depository of your choice, at your expense, in that foreign currency, that portion

thereof, if any, as shall equal the royalties which would have been payable to you hereunder on those exploitations had payment for those exploitations been Received by us. The foregoing deposit shall not be reflected on your accounting statements hereunder. Deposit as aforesaid and the use of our reasonable efforts to advise you thereof shall fulfill our royalty obligations hereunder as to those sales. If any law, ruling or other governmental restriction limits the amount a Licensee can remit to us, we may reduce your royalties hereunder by an amount proportionate to the reduction in that Licensee's remittance to us;

(d) You shall be deemed to have consented to all royalty accountings rendered or required to be rendered by us hereunder and each royalty accounting shall be conclusive, final and binding, shall constitute an account stated, and shall not be subject to any objection for any reason whatsoever, unless you give us notice stating the specific basis for that objection within three (3) years after the date rendered. You may not maintain any action, suit or proceeding of any nature against us in respect of any royalty accounting rendered or required to be rendered by us hereunder (or in respect of the Accounting Period to which it relates or was to relate) unless you commence that action, suit or proceeding in a court of competent jurisdiction within three (3) years after the date rendered. If you shall commence an action, suit or proceeding against us concerning royalty accountings rendered or required to be rendered by us hereunder, the scope of that action, suit or proceeding shall be limited to a determination of the amount of royalties, if any, payable for the Accounting Periods in question, and your sole remedy shall be the recovery of those royalties. For purposes of this subparagraph 10(d) and subparagraph 10(e) below, each royalty accounting required to be rendered hereunder shall be deemed to have been rendered as and when required unless you send us notice to the contrary not later than ninety (90) days after the date that royalty accounting was required to have been rendered hereunder;

(e) We shall maintain books and records concerning the sale of Records and other commercial exploitations of Masters hereunder. You shall have the right to designate a certified public accountant on your behalf (who shall not be compensated on a contingent fee basis), at your own expense, to examine those books and records (but not any of our books or records relating to the manufacture or distribution of Records hereunder) solely for the purpose of verifying the accuracy of royalty statements rendered by us hereunder, only during our normal business hours and only upon reasonable written notice. You shall not have the right, however, to engage a particular accountant (or his or her firm) to conduct an examination of our books and records on your behalf if that accountant (or his or her firm) is then-currently engaged in an examination or audit of our books and records (or in the resolution of any outstanding claims derived therefrom) on behalf of a third Person. Our books and records relating to a particular royalty statement may be examined only within three (3) years after the date rendered. Notwithstanding anything to the contrary contained in this subparagraph, if you

wish to engage a particular accountant (or his or her firm) to conduct an examination of our books and records on your behalf and that accountant (or his or her firm) is then currently engaged in an examination or audit of our books and records (or in the resolution of any outstanding claims derived therefrom) on behalf of a third Person, the running of the three (3) year period referred to in the immediately preceding sentence will be suspended for the duration of the time that such accountant (or his or her firm) is acting on behalf of such third Person and its expiration date will be postponed for the same amount of time, provided, however, such suspension shall only be effective if you engage such accountant (or his or her firm) immediately upon the conclusion of such accountant's (or his or her firm's) services for such third Person and in no event shall the duration of such suspension exceed one (1) year. We shall have no obligation to permit you to examine our books or records relating to any particular royalty statement more than once. Prior to rendering a report to you with respect to the examination of our books and records as aforesaid, the accountant engaged by you shall first review his or her tentative written findings with a designated representative of our finance department in order to remedy any factual errors and clarify any issues that may have resulted from misunderstanding. You hereby acknowledge that our books and records contain confidential trade information. Neither you nor your accountant or other representatives shall communicate at any time to any other Person or use on behalf of any other Person any information obtained as a result of any examination of our books and records. Further, prior to the commencement of any examination of our books and records in accordance with the provisions of this subparagraph, you shall cause the accountant engaged by you to sign a letter in a form approved by us which acknowledges his or her agreement (and the agreement of his or her firm) to be bound by the foregoing. Notwithstanding the foregoing, you or your certified public accountant shall have the right to communicate information obtained as a result of any such examination of our books and records to your attorney, personal manager or business manager, but only to the extent that (i) the information pertains to the accuracy of royalty statements and other accountings rendered by us hereunder and (ii) your attorney, personal manager and/or business manager agree on behalf of himself or herself (and on behalf of his or her firm) not to communicate that information at any time to any others or to use that information on behalf of any other Person. The rights hereinabove granted to you shall constitute your sole and exclusive rights to examine our books and records;

(f) We shall have the right to deduct from any monies payable hereunder any amounts paid or incurred by us to you or on your behalf or to or on behalf of any Person representing you (at your request or at the request of your attorney, personal manager or business manager), if those monies are not otherwise required to be paid or incurred by us hereunder (unless we expressly agree in writing that the payment in question is non-deductible or is only recoupable from royalties earned by you hereunder); and

(g) We shall have the right to deduct from any monies payable hereunder any amounts which are required to be deducted from those monies under any statute, regulation, treaty or other law, or under any union or guild agreement, and you shall promptly execute and deliver to us any documents reasonably required in connection therewith. If we fail for any reason to make any required deduction, then, without limiting any of our other rights or remedies, you shall pay us, upon demand, the amount of those monies which were paid to you but which we were required to have deducted, or, at our election, we may deduct that amount from any monies payable hereunder.

11. Composition Licenses & Royalties.

(h) You hereby grant to us and our designees the irrevocable, perpetual, non-exclusive right to use and/or reproduce each Controlled Composition (and the title and lyrics thereof) on and in connection with Records hereunder, including, without limitation, the advertising and promotion thereof, and to exploit those Records throughout the Territory;

(i) In connection with the grant of rights set forth in subparagraph 11(a) above, we shall pay the following amounts:

(i) (A) The rate for each Controlled Composition on a Record (other than an Audio-Visual Record) sold by us in the United States shall be the United States Controlled Composition Rate. The term "United States Controlled Composition Rate" shall mean an amount equal to one hundred percent (100%) of the "United States Statutory Rate." The term "United States Statutory Rate" shall mean an amount equal to the minimum statutory royalty rate (without regard to playing time) provided in the United States Copyright Act ("Act") for the mechanical reproduction of Compositions as of the "Determination Date" (defined below). If no such mechanical royalty rate exists under the Act, however, then the term "United States Statutory Rate" shall mean the mechanical royalty rate which we or our designee may negotiate in good faith at arm's-length with unrelated publishers effective as of the Determination Date;

(B) The rate for each Controlled Composition on a Record (other than an Audio-Visual Record) sold in Canada shall be the Canadian Controlled Composition Rate. The term "Canadian Controlled Composition Rate" shall mean an amount equal to one hundred percent (100%) of the Canadian Rate. The term "Canadian Rate" shall mean the minimum, standard mechanical royalty rate provided in mechanical licenses between record companies and unrelated publishers in Canada

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which are issued by CMRRA (or any successor) as of the Determination Date. If no such standard mechanical royalty rate exists, however, then the term "Canadian Rate" shall mean the mechanical royalty rate which we or our designee may negotiate in good faith at arm's-length with unrelated publishers effective as of the Determination Date. In no event, however, shall the number of Canadian pennies constituting the Canadian Rate exceed the number of United States pennies constituting the United States Rate in effect as of the Determination Date; and

(C) The term "Determination Date" shall mean the date of our initial commercial release in the United States of the (1st) Record containing the first (1st) Master hereunder embodying the Controlled Composition in question;

(ii) (A) The rate for each Controlled Composition on an Audio-Visual Record sold by us in the United States shall be an amount equal to seventy five percent (75%) of the United States Controlled Composition Rate;

(B) The rate for each Controlled Composition on an Audio-Visual Record sold in Canada shall be an amount equal to seventy five percent (75%) of the Canadian Controlled Composition Rate;

(C) No amount shall be payable for any unit of any Audio-Visual Record sold prior to such time as all Audio-Visual Production Costs of all Audio-Visual Recordings embodied in that Audio-Visual Record have been recouped from royalties earned by you hereunder in accordance with the provisions hereof; and

(D) The rate for each Controlled Composition on a Compilation Album shall be an amount equal to seventy-five percent (75%) of the United States Statutory Rate;

(iii) Upon our request, you shall cause the issuance to us and our designees of licenses to use and reproduce all Controlled Compositions on Records hereunder sold outside the United States and Canada on terms no less favorable to us and our designees than those generally applicable to Records distributed in the country in question; and

(iv) Notwithstanding the foregoing, the royalty rate for a Controlled Composition on a Budget Record or Premium shall be one-half ($\frac{1}{2}$) of the United States Controlled Composition Rate or the Canadian Controlled

Composition Rate, as applicable; the royalty rate for a Controlled Composition which is an arrangement of a public domain work shall be that percentage of the United States Controlled Composition Rate or the Canadian Controlled Composition Rate, as applicable, equal to the percentage of performance credit attributed to that Controlled Composition by ASCAP or BMI (as the case may be), but we shall have no obligation with respect to any such Controlled Composition until such time as you furnish us written confirmation of that percentage from ASCAP or BMI (as the case may be); the royalty rate for a Controlled Composition on an EP, Long-Play Single, Mid-Price Record, Record sold through a record club or New Record shall be three-fourths ($\frac{3}{4}$) of the United States Controlled Composition Rate or the Canadian Controlled Composition Rate, as applicable; and if any particular Record embodies more than one (1) of the same or different Master Recordings of the same Controlled Composition, then the United States Controlled Composition Rate or Canadian Controlled Composition Rate, as applicable, shall be payable only once on all uses and/or reproductions of that Controlled Composition in that Record. No royalties shall be payable for the use or reproduction of any Controlled Composition which is less than one minute thirty seconds (1:30) in duration;

(j) (i) Notwithstanding anything to the contrary contained herein, for Net Sales in the United States, the maximum amount payable by us in connection with the exploitation of all Selections, including Controlled Compositions, on a Record, regardless of the number of Selections thereon, shall be the product of (A) the United States Controlled Composition Rate and (B) ten (10) for an Album in any form other than a Compact Disc, eleven (11) for an Album in the Compact Disc format, five (5) for an EP, two (2) for a Single, three (3) for a Long-Play Single, and the number of Selections thereon (but not more than ten [10]) for an Audio-Visual Record; and for Net Sales in Canada, the maximum amount payable by us in connection with the exploitation of all Selections, including Controlled Compositions, on a Record, regardless of the number of Selections thereon, shall be the product of (A) the Canadian Controlled Composition Rate and (B) ten (10) for an Album in any form other than a Compact Disc, eleven (11) for an Album in the Compact Disc form, five (5) for an EP, two (2) for a Single, three (3) for a Long-Play Single, and the number of Selections thereon (but not more than ten [10]) for an Audio-Visual Record;

(ii) Notwithstanding the foregoing, if we release a Multiple Album embodying solely Masters, then the maximum amount payable for Net Sales of that Multiple Album in the United States or Canada shall be the otherwise applicable maximum set forth in subparagraph 11(c)(i) above for Net Sales of Albums in the United States or Canada multiplied by a fraction, the numerator of which is the Royalty Base Price of that Multiple Album in the

United States or Canada, as applicable, and the denominator of which is the highest Royalty Base Price of an Album which is not a Multiple Album in the configuration or format in question released on our top-line label in the United States or Canada, as applicable, as of the date of the initial commercial release in the United States or Canada, as applicable, of that Multiple Album; and

(iii) Notwithstanding anything to the contrary contained herein, royalties for the use or reproduction of any Selection in any Record distributed by us or our Licensees shall be payable only on Net Sales of that Record and only on those Net Sales for which a Record royalty is payable pursuant to paragraph 9 above and on fifty percent (50%) of those units of Albums distributed in the United States as Free Goods (other than Free Goods distributed pursuant to Special Sales Programs);

(k) We shall account for and pay royalties for the use or reproduction of Controlled Compositions in accordance with the provisions of subparagraphs (a), (d), (e), and (g) of paragraph 10 above, except that we shall send statements for those mechanical royalties on or before May 31 for the quarter-annual period ending the preceding March 31, on or before August 31 for the quarter-annual period ending the preceding June 30, on or before November 30 for the quarter-annual period ending the preceding September 30, and on or before the last day of February for the quarter-annual period ending the preceding December 31;

(l) You acknowledge that as an element of your delivery to us of a Master, you are required to cause the issuance to us or our designees of licenses to use or reproduce each Outside Selection (and the title and lyrics thereof) on the Required Terms. The term "Required Terms" shall mean (i) for Records sold in the United States or Canada, royalty rates and other terms that do not exceed the royalty rates and that otherwise are no less favorable to us and our designees than those provided in the standard licenses issued by The Harry Fox Agency, Inc. or any successor for audio Records sold in the United States and by CMRRA or any successor for audio Records sold in Canada or on then-current industry standard terms for Audio-Visual Records sold in the United States or Canada, except that the royalty rate for the use or reproduction of any Outside Selection on a Record sold in the United States or Canada must not exceed the United States Statutory Rate or the Canadian Rate, as applicable, and no royalties shall be payable for the use or reproduction of an Outside Selection on Records sold in the United States or Canada for which no Record royalties are payable under paragraph 9 above (other than on fifty percent (50%) of those units of Albums distributed in the United States as Free Goods [other than Free Goods distributed pursuant to Special Sales Programs]) or otherwise and (ii) for Records sold outside the United States and Canada, terms no less favorable to us and our designees than those generally applicable to Records distributed in the country in question. If for any reason you fail to cause the issuance to

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us or our designees of a license for the mechanical reproduction of any Outside Selection as and when required hereunder, we shall have the right, at our election and without limiting our other rights or remedies in that event, to negotiate and execute licenses for the mechanical reproduction of those Outside Selections on Records distributed in the United States or Canada on terms and conditions which are determined solely by us or our designees;

(m) If the copyright or any other interest in any Controlled Composition is owned or controlled by a Person other than you, you shall cause that Person to grant to us and our designees the same rights, on the same terms, as set forth in this paragraph 11. To the extent that a Selection is in part a Controlled Composition and in part an Outside Selection, the provisions of subparagraph 11(a) above shall apply to the entirety of that Selection, and the foregoing shall not limit your obligations pursuant to subparagraph 11(e) above;

(n) Notwithstanding anything to the contrary contained herein, the obligation to account for and pay royalties for the use and/or reproduction of any Selection on sales of Records or exploitations of Masters outside of the United States shall be that of the Licensee. In addition, the obligation to account for and pay royalties for any Selection on sales of Records or exploitations of Masters in the United States (other than sales or exploitations by us through our principal distributor in the United States) shall be that of the Licensee; and

(o) Notwithstanding anything to the contrary contained in this Agreement, we shall not recoup any advances from royalties payable for the use or reproduction of Controlled Compositions, except pursuant to the overpayment provision of subparagraph 10(a) above, the provisions of subparagraph 13(j) below and the indemnity provisions of paragraph 19 below.

12. Audio-Visual Recordings.

(a) Upon our request, you shall appear (subject to your previously-scheduled professional commitments of which you shall notify us, but in any event you shall be reasonably available to appear) for the making of Audio-Visual Recordings embodying your performances on the following terms:

(i) We shall designate for your and our mutual approval the Audio-Visual Production Elements, or at our election, you shall designate and submit to us for our approval, one (1) or more Audio-Visual Production Elements;

(ii) We shall pay the Audio-Visual Production Costs of Audio-Visual Recordings in an amount not in excess of a budget approved by us

in writing. One hundred percent (100%) of the Audio-Visual Production Costs shall be recoupable from any royalties payable under this Agreement on the reproduction or other exploitation of all Audio-Visual Recordings and Audio-Visual Records, but to the extent such Audio-Visual Production Costs are not recouped from royalties earned with respect to the exploitation of Audio-Visual Records, not more than fifty percent (50%) of the Audio-Visual Production Costs of a particular Audio-Visual Recording hereunder shall be recoupable from royalties earned by you on exploitations of Masters in audio-only Records. Without limiting our rights pursuant to the foregoing sentence, however, if the Audio-Visual Production Costs of any particular Audio-Visual Recording exceed Two Hundred Fifty Thousand Dollars (\$250,000), the full amount of that excess shall be recoupable from royalties earned by you on exploitations of Masters in audio-only Records; and

(iii) You shall cooperate with us and our designees and you shall perform to the best of your ability in connection with the production of the Audio-Visual Recordings; and

(b) Audio-Visual Recordings shall not apply in fulfillment of your Recording Commitment. We shall have no obligation, except as expressly otherwise provided in this paragraph 12, to pay any monies in connection with the production of Audio-Visual Recordings.

13. Warranties, Representations and Covenants.

You hereby warrant, represent, covenant and agree as follows:

(a) You have the right and power to enter into this Agreement, to grant the rights granted by you hereunder, and to perform all of the terms hereof. Without limiting the generality of the foregoing, no Selection shall be subject to any re-recording or other restriction;

(b) During the Term you shall become and remain members in good standing of any labor union or guilds with which we may have an agreement lawfully requiring your membership;

(c) All recording sessions for Masters and/or Audio-Visual Recordings shall be conducted in all respects in accordance with the terms of the AF of M Record Labor Agreement, the AFTRA Code for the Phonographic Industry, and agreements with all other labor unions and guilds having jurisdiction over the recording of the Masters and/or Audio-Visual Recordings;

(d) None of the following will violate or infringe upon the rights of any Person, including, without limitation, contractual rights, copyrights, rights of publicity and rights of privacy: the Masters; the Name; any Selections; and any materials, ideas or other properties furnished or designated by you and embodied, contained or used in connection with the Masters or the packaging of or the advertising for Records embodying Masters;

(e) You shall not render any services to or authorize or permit your name, likeness, other identification or biographical material to be used in any manner by any Person in the advertising, promotion or marketing of blank magnetic recording tape, digital audio tape or any other product or device intended to be sold, whether now known or hereafter developed, which may be used for the fixation of sound alone or sound together with visual images. The foregoing restriction shall not apply to any such material marketed and sold solely to professionals in the recording industry;

(f) During the Term, you shall not exploit or authorize the exploitation on Records of any recorded performance by you created prior to the Term, except for those recorded performances commercially exploited prior to the date hereof on Phonograph Records with your authority;

(g) You shall not, at any time, directly or indirectly, give or offer to give any consideration of any kind to any radio or television station or network, to any employee thereof, or to any Person controlling or influencing that station or network's programming for the purpose of securing the broadcast or promotion of any Record hereunder;

(h) Each of you is at least of the age of majority for purposes of entering into and executing this Agreement in the state of New York and the state in which each of you reside;

(i) You shall not pay or incur any cost for which we may be held responsible unless we otherwise consent in writing; and

(j) Except as otherwise specifically provided herein, we shall have no obligation hereunder or otherwise to pay any Person any amounts in connection with the exercise of any of our rights hereunder. You shall be solely responsible for: (i) all Recording Costs in excess of the applicable Recording Fund set forth in paragraph 8 above (as reduced by any advances or other payments or expenses which do or are intended to reduce that Recording Fund), or in excess of the Recording Budget therefor designated or approved by us for any recording project for which there is no Recording Fund, unless the excess in question was caused solely by our wrongful acts or omissions; (ii) any penalties incurred for late payments caused by your (or your producer's) delay in

submitting union contract forms, report forms, invoices or other documents pursuant to subparagraph 4(b) above; (iii) all royalties payable to any producers, mixers, remixers or any other Persons contributing to the recording or delivery to us of the Masters (except as may be provided in subparagraph 17(c) below); (iv) any royalties or other payments for the use, reproduction and/or synchronization of any Selection in any Record in excess of the applicable rates and/or applicable maximum amounts set forth in paragraph 11 above; (v) any Audio-Visual Production Costs in excess of the budget therefor approved by us in writing caused by your acts or omissions; (vi) any costs to create or reproduce Artwork or packaging for any Record in excess of our then-current standard amount (as we may determine in good faith from time to time) for the item in question, except as otherwise provided in paragraph 26 below; and (vii) all other costs, if any, which are in excess of the amounts which we have specifically agreed to pay as set forth in this Agreement. All of the amounts for which you are responsible as provided above shall be paid by you promptly upon our demand therefor (or reimbursed by you upon our demand therefor if paid by us). Those amounts may also be deducted from all monies payable pursuant to this Agreement or otherwise to the extent to which they have not been paid or reimbursed by you as provided in the immediately preceding sentence.

14. Recording Restrictions.

(a) During the Term, you shall not enter into any agreement or make any commitment which would materially interfere with your performance of any of the terms hereof. Further, during the Term you shall not perform for or render services in connection with the recording of any Master Recording for use or reproduction in a Record by any Person other than us and you shall not exploit at any time or authorize the exploitation at any time by any other Person any such Master Recording. You shall cooperate with us in any controversy which may arise or litigation which may be instituted relating to our rights pursuant to this subparagraph;

(b) After the Term, you shall not perform prior to the Restriction Date for any Person other than us, for the purpose of recording a Master Recording, any Selection recorded hereunder or under any other agreement between you, on the one part, and us or any of our affiliates, on the other. The term "Restriction Date" shall mean the later of (i) the date five (5) years subsequent to the last date on which a Master embodying that Selection was delivered to us and (ii) the date two (2) years subsequent to the date on which the Term ended. Notwithstanding the foregoing, the term "Restriction Date" shall mean the date eighteen (18) months after the end of the Term as to any Selection recorded in a Master which Selection has not been exploited on or before the date eighteen (18) months after the end of the Term. You shall not at any time exploit or authorize the exploitation by any Person other than us of any Record of any performance rendered by you after the Term of a Selection recorded hereunder if that performance shall have been rendered prior to the Restriction Date applicable to that Selection. You

shall reasonably cooperate with us in any controversy which may arise or litigation which may be instituted relating to our rights pursuant to this subparagraph;

(c) Notwithstanding anything to the contrary contained herein, you may perform as a so-called "side-artist" or background vocalist on Master Recordings embodying the featured performances of other featured artists ("Side Artist Recordings"), subject to the following conditions:

(i) Such performance for a Side Artist Recording shall not interfere with the timely performance of your material obligations hereunder;

(ii) No more than one (1) member of you may perform on any one (1) Side Artist Recording and such member may not perform a solo or "step out" on any Side Artist Recording;

(iii) Neither your likeness nor the name of the Group may be used in any manner in connection with a Side Artist Recording. The member of you rendering services may receive credit only in liner notes of an Album containing the Side Artist Recording with other side-artists or background vocalists or in instrument groupings (as applicable) and only in a size and prominence no greater than that accorded to the other side-artists and background vocalists on the Side Artist Recording concerned). You may not receive front-cover credit on the packaging of any Record embodying a Side Artist Recording or credit in any advertisements placed for or on behalf of any Record embodying a Side Artist Recording;

(iv) We shall receive a courtesy credit on the packaging of all Records upon which you shall receive any credit pursuant to this subparagraph and the placement of our credit shall be no less favorable to us than the credit accorded to any other Person entitled to the services of a side-artist or background vocalist performing on the Record concerned; and

(v) You shall cause the Person for which you render services as a side-artist or background vocalist to agree in writing for our benefit to the provisions of subparagraphs (c)(ii), (iii) and (iv) above;

(d) Nothing contained herein shall limit the right of any one (1) of you to render services as a producer of Master Recordings embodying the featured performances of Persons other than you or any member of you ("Produced Recording") subject to the following conditions:

(i) Any services to be rendered as a producer of a Produced

Recording shall not interfere with the timely performance of your material obligations hereunder;

(ii) A Produced Recording shall not embody the performances of any one (1) of you as a musical or vocal artist, whether as a side artist, background vocalist or otherwise; and

(iii) Neither your likeness nor the name of the Group may be used in any manner in connection with a Produced Recording or any advertising or marketing materials related thereto. Your name may only be used in connection with a Produced Recording in a customary producer credit on the back cover and in the liner notes of a Record embodying that Produced Recording and in such other materials related thereto as producers customarily receive producer credit in the Record industry; and

(e) Notwithstanding the foregoing, any member of you shall have the right to render that member's services in a non-musical role for the purpose of making a primarily dramatic motion picture or television program (i.e., any motion picture or television program which does not include any visual performance of any Composition or any background use of any Composition which is intended as a focus of audience attention, whether or not the visual matter is related dramatically to the lyrics or concept of the Composition), provided that the rendering of those services does not materially interfere with the performance of your obligations hereunder.

15. Unique Services. You expressly acknowledge that your services hereunder are of a special, unique, intellectual and extraordinary character which gives them peculiar value, and that, if you shall breach any term hereof, we will be caused irreparable injury which cannot adequately be compensated by money damages. Accordingly, we shall be entitled to seek injunctive relief, in addition to any other rights or remedies which we may have, to enforce the terms of this Agreement. Nothing contained in the foregoing shall limit your right to contest the facts upon which any such injunction is based.

16. Certain Remedies.

(a) We may, at our election, suspend the running of the Term and our obligations hereunder upon notice to you (i) if for any reason your voice or ability to perform as an instrumentalist shall become materially impaired for a period of more than ninety (90) consecutive days or more than one hundred eighty (180) days in the aggregate in any consecutive twelve (12) month period, (ii) if you shall refuse, neglect, fail or be unable to fulfill any material obligation hereunder, or (iii) if as a result of an Act of God, accident, fire, labor controversy, riot, civil commotion, act of public enemy, law, enactment, rule, order, act of any government or governmental instrumentality, failure of

technical facilities, failure or delay of transportation facilities, illness or incapacity of you or other Persons, or other cause of a similar or dissimilar nature not reasonably within our control, we are hampered in the recording, manufacture, distribution or sale of Records or our normal business operations become commercially impractical. A suspension shall be for the duration of any such event or contingency, and, unless we notify you to the contrary, the Contract Period during which that event or contingency shall have commenced shall be extended automatically by a number of days equal to the total number of days of the suspension, or such fewer number of days of which we may notify you. If any period of suspension arising from events other than (i) the material impairment of your voice or your ability to perform as an instrumentalist, (ii) your refusal, neglect, failure or inability to fulfill any material obligation hereunder, or (iii) any other event affecting a substantial portion of the United States recording industry, shall exceed six (6) consecutive months in duration, you may give to us notice at any time during the continuation of that period of suspension after the date six (6) months after its commencement of your desire that we discontinue such period of suspension and that the Term be terminated if we fail to do so ("Termination Request"). If we shall fail to give to you notice of our discontinuance of the period of suspension within thirty (30) days after our receipt of your Termination Request, the Term shall expire and we shall have no obligations or liabilities to you hereunder except for our obligation hereunder to account for and credit to your account royalties with respect to the exploitation of Masters delivered to us prior to such expiration of the Term, and our obligation hereunder to allow you to examine our books and records in accordance with subparagraph 10(e) above. Notwithstanding the foregoing, a suspension of the Term pursuant to any of subparagraphs 16(a)(i) or 16(a)(iii) above shall not suspend our royalty accounting obligations hereunder, unless the event causing that suspension affects our ability to render statements. No suspension shall in any manner suspend or otherwise impair our rights under this Agreement;

(b) If your voice or ability to perform as an instrumentalist shall become materially impaired for a period of more than ninety (90) consecutive days or more than one hundred eighty (180) days in the aggregate in any consecutive twelve (12) month period, if you shall refuse, neglect, fail or be unable to fulfill any material obligation hereunder, including, without limitation, the obligation to record for and deliver to us Masters within the time periods set forth in paragraph 3 above, or if we reasonably believe that you will not be able to deliver to us any Master within the Recording Budget therefor approved by us, then, without limiting our other rights or remedies, we may terminate the Term upon notice to you, in which event we shall have no obligations or liabilities to you under this Agreement, except for our obligations, if any, with respect to Masters recorded prior to that termination. If we so terminate the Term, you shall pay us, on demand, an amount equal to any unrecouped advances hereunder, other than any advances attributable to and paid in respect of any Master delivered to us prior to that termination; and

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(c) If we refuse to permit you to fulfill your Recording Commitment for any Contract Period, other than as a result of an event or contingency set forth in subparagraph 16(a) above, we shall have no obligations or liabilities to you in connection therewith unless within forty five (45) days after our refusal, you shall notify us of your desire to fulfill your Recording Commitment for that Contract Period and within thirty (30) days after our receipt of that notice we fail to notify you that we shall permit you to fulfill your Recording Commitment for that Contract Period. If we shall fail to so notify you that we shall permit you to fulfill your Recording Commitment for that Contract Period, the Term shall expire as of the end of that thirty (30) day period and we shall have no obligations or liabilities to you in connection therewith. We shall pay to you, however, promptly after the expiration of that thirty (30) day period, as an advance recoupable from royalties earned by you hereunder, an amount equal to (i) the aggregate of the minimum Recording Funds fixed in paragraph 8 above for each Required Album then remaining unrecorded of your Recording Commitment for the Contract Period during which the Term is so terminated (less any amounts previously paid or incurred by us which may or were intended to reduce any of those Recording Funds) less (ii) the average amount of the Recording Costs for the last two (2) Required Albums recorded hereunder (or if only one (1) Required Album has been recorded, the amount of the Recording Costs for that Required Album), multiplied by the number of unrecorded Required Albums set forth in clause (i) above. If for any reason we have not directly paid or incurred Recording Costs in connection with any Required Album, eighty percent (80%) of the Recording Fund for such Album shall be deemed "Recording Costs" for purposes of the preceding sentence. Notwithstanding the foregoing, if Masters sufficient to constitute at least the First Album have not been delivered to us, then the amount of the advance payable to you pursuant to the preceding sentence shall be an amount equal to the minimum union scale payments which would have been required to have been paid to you for the First Album. For the purposes of the foregoing, an Album shall be deemed to be comprised of eight (8) Masters.

17. Producer and Other Royalties.

(a) You shall be solely responsible for engaging, and you shall pay all royalties and other compensation which may be payable to, any producers of Masters or to any other Persons rendering services in connection with the recording of Masters or otherwise entitled to compensation in respect of the exploitation of Masters

(b) Notwithstanding the foregoing, for each semi-annual accounting period hereunder ending not earlier than ninety (90) days after our receipt of an executed letter of direction in the form attached hereto as Exhibit B, together with a complete copy of an executed agreement between you and the producer which sets forth terms reasonably acceptable to us, we shall account for and pay royalties in accordance with the

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provisions of those letters of direction, at our revocable election and as an accommodation to you, to producers of Masters constituting each Required Album. Notwithstanding the foregoing, we shall not unreasonably withhold our approval of any executed agreement between you and a producer of Masters if that agreement provides for advances and/or other fees payable to the producer approved by us pursuant to the applicable Recording Budget and provides for a royalty rate applicable to full-priced USNRC Net Sales of an Album comprised solely of Masters produced by that producer not in excess of four percent (4%) of the Royalty Base Price of that Album, prorated, calculated, proportionately reduced, adjusted and paid on the same percentage of Net Sales as royalties are payable to you hereunder. Notwithstanding anything to the contrary contained herein or in your agreement with any producer of Masters, and without limiting the generality of the foregoing, our performance of the provisions of this subparagraph shall not be deemed rendered by us directly for the benefit of any producer of Masters, no producer shall constitute a third party beneficiary hereof and no producer of Masters shall have any rights or remedies hereunder or otherwise in connection with our rendering or failure to render statements or make payments. The provisions of this subparagraph shall not apply if the producer in question is you or any member of you;

(c) Notwithstanding the provisions of subparagraph 17(a) above, we may, but shall not be obligated to, enter into an agreement with any producer of any Master which provides for the payment by us, rather than you, of royalties or other compensation payable to that producer. Any advances and/or fees payable by us to that producer of any Master must be set forth in the applicable Recording Budget approved by us and shall be deducted from the applicable Recording Fund, if any. Any royalties paid by us to any such producer shall be deducted from royalties earned by you hereunder. If a staff producer or other regular employee of ours ("Staff Producer") renders services as a producer of any Master, we shall have the right to deduct from the Recording Fund, if applicable, or deem included in the applicable Recording Budget an amount equal to Two Thousand Five Hundred Dollars (\$2,500) for each Master so produced and shall deduct from your royalties hereunder an amount equal to a royalty calculated at a rate of three percent (3%) of the Royalty Base Price of full-priced USNRC Net Sales of Albums embodying such Master produced by a Staff Producer (or two percent [2%] of the Royalty Base Price of full-priced USNRC Net Sales of Albums embodying Masters which are co-produced by a Staff Producer), prorated, calculated, proportionately reduced, adjusted and paid in accordance with our employment agreement with such Person and payable from the first Record sold; and

(d) For purposes of the recoupment of any advances or other charges under this Agreement, your royalty hereunder with respect to any Master for which we pay a producer royalty pursuant to the foregoing provisions of this paragraph 17 shall be deemed reduced by the amount of the applicable producer royalty with respect to that Master. Advances and/or fees payable by us to or in respect of the services of any such

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producer which are not recouped from royalties earned by that producer may be recouped by us from any royalties earned by you hereunder.

18. Definitions.

- (a) The term "Album" shall mean one (1) twelve (12) inch thirty three and one-third (33-1/3) rpm long-playing Conventional Disc or its Conventional Tape or other Record equivalent, with not less than eight (8) different Selections and of no less than forty-two (42) minutes in playing time (unless we elect to permit a shorter playing time), or, where the context requires, Masters sufficient to constitute the foregoing. The maximum playing time of an Album shall not exceed the maximum number of minutes capable of being reproduced pursuant to the technological specifications of the format or configuration concerned, which shall be designated by us in our reasonable good faith discretion;
- (b) The term "Audio-Visual Production Costs" shall mean all union scale payments approved by us and made to you in connection with the production of Audio-Visual Recordings, all other payments made to any other Person pursuant to any applicable law or regulation or the provisions of any collective bargaining agreement between us and any union or guild (including, without limitation, payroll taxes and payments to union pension and welfare funds), all payments made to any other Person rendering services in connection with the production of Audio-Visual Recordings, all amounts paid or incurred for studio, hall, location or set rentals, costumes, props, tape, film, other stock, engineering, editing, instrument rentals and cartage, transportation and accommodations, immigration clearances, any so-called "per diems" for any Person (including you) rendering services in connection with the production of Audio-Visual Recordings, together with all other amounts paid or incurred in connection with the production and delivery to us of Audio-Visual Recordings. For the avoidance of doubt, Audio-Visual Production Costs shall include the transportation and accommodation costs and "per diems" of our A&R and/or music video executives rendering services during the production of Audio-Visual Recordings but shall not include the transportation and accommodation costs and "per diems" of our other executives in attendance (unless such attendance is requested by you) during the production of Audio-Visual Recordings;
- (c) The term "Audio-Visual Production Elements" shall mean the Compositions embodied in Audio-Visual Recordings, the producer and director of Audio-Visual Recordings, all other Persons rendering services in connection with the production of Audio-Visual Recordings, the storyboard and script for the production of Audio-Visual Recordings, and the locations at and the dates on which Audio-Visual Recordings shall be produced;
- (d) The term "Audio-Visual Record" shall mean a Record embodying

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visual images. A Phonograph Record released by us in the "CD plus" or "enhanced CD" format shall not be an Audio-Visual Record but shall be a Compact Disc for all purposes of this Agreement;

(e) The term "Audio-Visual Recording" shall mean a Master embodying visual images;

(f) The term "Budget Record" shall mean the following: (i) with respect to Records sold in the United States, a Record bearing a Royalty Base Price less than sixty five percent (65%) of the Royalty Base Price in the United States of the greater of (A) the highest Royalty Base Price for any Record in the same configuration then regularly sold by us in the United States and (B) the highest Royalty Base Price at which the Record in question was ever sold by us in the United States; and (ii) with respect to Records sold outside the United States, a Record bearing a Royalty Base Price in the country in question less than or equal to eighty percent (80%) of the Royalty Base Price of the greater of (A) the highest Royalty Base Price of any Record in the same configuration then regularly sold by our principal Licensee in the country in question and (B) the highest Royalty Base Price at which the Record in question was ever sold by our principal Licensee in that country. Notwithstanding the foregoing, if our agreement with our principal Licensee of Records in any particular country of the Territory outside of the United States makes a distinction between "budget" Records and "mid-price" Records and the percentage reduction triggering the definition of "budget" Records in the agreement in question is less than eighty percent (80%), then that percentage shall be applied in lieu of the percentage set forth in this subparagraph for the country concerned;

(g) The term "Compact Disc" shall mean a Record in any configuration (e.g., Album, Single, EP) in physical disc form with a diameter of four and five-eighths inches (4-5/8") primarily reproducing sound (but not together with visual images, except as otherwise provided in subparagraph 18(d) above), the signals of which are encoded and decoded using digital technology and read from only one side of that disc by means of a laser;

(h) The term "Compilation Album" shall mean any Album embodying Masters hereunder together with other Master Recordings not subject to this Agreement;

(i) The term "Composition" shall mean a single musical composition (and a medley shall be deemed a single musical composition);

(j) The term "Controlled Composition" shall mean a Composition or other Selection, written or composed by you, in whole or in part, alone or in collaboration with other Persons, or which is owned or controlled, in whole or in part, directly or indirectly, by you, or any Person in which you have a direct or an indirect interest;

(k) The term "Conventional Disc" shall mean a black vinyl disc in analog form reproducing a Phonograph Record;

(l) The term "Conventional Tape" shall mean an analog tape cassette reproducing a Phonograph Record;

(m) The term "delivery to us" or words of similar connotation used in connection with Masters or Records shall mean delivery to our production manager (or such other Person as we may designate in writing from time to time) at our offices in New York, New York (or such other location as we shall determine) of all of the following: all two (2)-inch multi-track master tapes, or if the Masters concerned were produced using digital recording equipment, a 3348 digital multi-track master tape, and a two-track sequenced, equalized, fully-mixed and mastered digital audio tape and/or U-matic 1630 tape (or such other medium as we may hereafter designate consistent with industry standards) in proper form for the production of the parts necessary to manufacture or distribute Records therefrom and all consents, approvals, copy information, credits, licenses for all Selections recorded in those Masters, producer and mixer declarations, and other material and documents required by us to release Records embodying those Masters and to manufacture covers or other packaging therefor (including, without limitation, Artwork). No Master shall be deemed to have been delivered to us unless that Master is accepted by us as satisfactory pursuant to the provisions of subparagraph 4(e) above. Our election to pay to you any monies which were otherwise required to have been paid in connection with your delivery to us of any Master or our election to release or distribute any Record derived from any Master shall not be deemed to be an acknowledgment by us that delivery to us of that Master has been completed in accordance with the provisions of this subparagraph 18(l);

(n) The term "EP" shall mean a twelve (12) inch thirty three and one-third (33-1/3) rpm or forty five (45) rpm Conventional Disc, or its Conventional Tape or other Record equivalent, with no fewer than four (4) different Selections and no more than seven (7) different Selections;

(o) The term "GH Master" shall mean a Master which is newly recorded for and intended for initial commercial release in and as part of a so-called "best of" or "greatest hits" compilation Album;

(p) The term "GH Album" shall mean a so-called "best of" or "greatest hits" Album which may include one (1) or more GH Masters;

(q) The term "Licensee" shall mean a licensee of rights from us, including, without limitation, wholly or partly owned subsidiaries, affiliates and other

divisions and companies of the Walt Disney Company;

(r) The term "Long-Play Single" shall mean a twelve (12) inch thirty three and one-third (33-1/3) rpm or forty five (45) rpm Conventional Disc, or its Conventional Tape or other Record equivalent with three (3) different Selections;

(s) The term "Master Recording" shall mean every form of recording (whether now known or unknown), of sound alone, or sound accompanied by visual images, which may be used in the recording, production, manufacture or transmission of Records;

(t) The term "Master" shall mean a Master Recording embodying your performances recorded or delivered to us during the Term;

(u) The term "Mid-Price Record" shall mean the following: (i) for a Record sold in the United States, a Record bearing a Royalty Base Price equal to or in excess of sixty-five percent (65%) and less than or equal to eighty percent (80%) of the greater of (A) the highest Royalty Base Price for any Record in the same configuration then regularly sold by us in the United States and (B) the highest Royalty Base Price at which the Record in question was ever sold by us in the United States; and (ii) for a Record sold outside the United States, a Record bearing a Royalty Base Price equal to the Qualifying Percentage of the greater of (A) the highest Royalty Base Price for any Record in the same configuration then regularly sold by our principal Licensee in the country in question and (B) the highest Royalty Base Price at which the Record in question was ever sold by our principal Licensee in the country in question. The "Qualifying Percentage" shall be the percentage (or range of percentages) used in our agreement with our principal Licensee in the country in question for the definition of a "mid-price" Record, if so defined in that agreement;

(v) The term "Multiple Album" shall mean two (2) or more Albums sold together as one (1) product;

(w) The term "Name" shall mean any and all of your legal name(s) and current professional name(s) or any other name(s) you may use for your professional activities at any time in any part of the Territory;

(x) The term "Net Receipts" shall mean the flat-fee or royalty specifically attributable solely to one (1) or more Masters Received by us from a Person for the exploitation by that Person of rights in those Masters, less all costs paid or incurred by us in connection with the exploitation of those rights and the collection of those monies, less all taxes and adjustments and less all royalties or other sums payable by us to any Person in connection with the exploitation of those rights, including, without

limitation, royalties for the use and/or reproduction of the Selections embodied in those Masters, but excluding royalties or other sums payable to producers or other Persons rendering services in connection with the recording of those Masters, which shall be borne solely by you;

(y) The term "Net Sales" shall mean one hundred percent (100%) of gross sales less returns, credits and reserves against anticipated returns and credits. Notwithstanding the foregoing, if any Licensee accounts to us on the basis of less than one hundred percent (100%) of gross sales (less returns, credits and reserves), then for purposes of the exploitation in question, the term "Net Sales" shall be deemed to be those sales on which that Licensee accounts to us;

(z) The term "New Record" shall mean a Record (whether now known or unknown) other than a Phonograph Record, including, without limitation, the reproduction, exploitation or performance of a Master Recording by means of telephone, satellite, Internet, cable or other transmissions to the consumer over wire or its equivalent or through the air or other element;

(aa) The term "Outside Selection" shall mean a Selection or portion thereof which is not a Controlled Composition;

(bb) The term "Person" shall mean any natural person, legal entity or other organized group of persons or entities;

(cc) The term "Phonograph Record" shall mean a Record in a physical, non-interactive Record configuration (e.g., a vinyl disc, a cassette tape, a Compact Disc, a videocassette, etc.) as created by the manufacturer and/or distributor prior to its placement in distribution channels intended to reach the consumer;

(dd) The term "Premium" shall mean any Phonograph Record specifically created for or sold in connection with the sale, advertising or promotion of any other product or service;

(ee) The term "Received" when used in connection with monies or payments shall mean our actual receipt of those monies or payments in United States dollars in the United States or credits to our account in reduction of advances previously received by us (and not paid to you) in United States dollars in the United States from any Person, including without limitation, a Licensee. If any monies are Received in connection with Records sold by us directly to consumers where those monies are not specifically attributable to each such Record, then those monies shall be allocated reasonably by us. If any monies are Received for any exploitation of any Master from any source which pays you directly or indirectly for that exploitation, whether as a result of

any law, rule or regulation or any industry-wide agreement, then those monies shall not be deemed Received for purposes of this Agreement;

(ff) The term "Record" shall mean every form of reproduction, transmission or communication (whether now known or unknown), embodying sound alone, or sound accompanied by visual images, manufactured, distributed, transmitted or communicated, directly or indirectly, for home use, business use, school use, personal use, jukebox use or use in means of transportation;

(gg) The term "Recording Costs" shall mean, without limitation, all minimum union scale payments made to you, all payments made to any other Person rendering services in connection with the production and recording of the Masters (including, without limitation, the producers and mixers of the Masters), all other payments which are made pursuant to any applicable law or regulation or the provisions of any collective bargaining agreement between us and any union or guild (including, without limitation, payroll taxes and payments to union pension and welfare funds and/or health and retirement funds, but excluding payments to the AFM Special Payments Fund and the Musicians Performance Fund based upon record sales, i.e., so-called "per-record royalties"), all amounts paid or incurred for studio or hall rentals, tape, engineering, editing, mixing, remixing, instrument rentals and cartage, mastering, transportation and accommodations, immigration clearances, any other clearances, any so-called "per diems" for any Person (including you) rendering services in connection with the recording of the Masters, together with all other amounts paid or incurred in connection with the production, recording and delivery to us of the Masters or Records derived therefrom. For the avoidance of doubt, Recording Costs shall include the transportation and accommodation costs and "per diems" of our A&R executives and/or Staff Producers rendering services during the recording and/or production of the Masters but shall not include the transportation and accommodation costs and "per diems" of our other executives in attendance (unless such attendance is requested by you) during the recording and/or production of the Masters;

(hh) The term "Recording Elements" shall mean the producer of each of the Masters, the Selections which shall be embodied in those Masters, all other Persons rendering services in connection with the recording of those Masters, and the studios at and the dates on which those Masters shall be produced;

(ii) The term "Royalty Base Price" shall mean the following amounts for the following Records (in each case less fifteen percent [15%] of the applicable amount for all Records in the form of Conventional Discs [other than Singles in the form of Conventional Discs packaged in plain paper sleeves, for which there shall be no such deduction], twenty percent [20%] of the applicable amount for all Records in the form of Conventional Tapes and twenty-five percent [25%] of the applicable amount for all other

Records, and then less an amount equal to any excise, sales, value-added or similar taxes which are included therein):

(i) For Records sold in the United States:

(A) (1) The SRLP for all Records (other than (aa) Albums in the form of Compact Discs, (bb) Audio-Visual Records, (cc) Records sold by us directly to consumers and (dd) Premiums); and

(2) Notwithstanding the foregoing, we shall have the right at any time, at our election, to calculate royalties hereunder on the basis of our principal distributor's price (before consideration of any discounts resulting from the distribution of Free Goods), from time to time, to its customers in the United States of Records, in lieu of the SRLP of those Records, multiplied by the Uplift. The term "our principal distributor's price" shall mean the lowest wholesale price paid by the largest category of customers to our principal distributor in the United States during the relevant semi-annual accounting period. The term "Uplift" shall mean a fraction, the numerator of which is the SRLP of a Comparable Record immediately prior to the date on which we cease utilizing the SRLP and the denominator of which is our principal distributor's price (before consideration of any discounts resulting from the distribution of Free Goods) to its customers in the United States of a Comparable Record immediately prior to the date on which we cease utilizing the SRLP. The term "Comparable Record" shall mean a Record of the same configuration, with the same packaging, and in the same price category as the Record in question. For sales occurring immediately after the effective date of the application of the provisions of this subparagraph (2), that application of the foregoing in and of itself shall not result in a reduction in the amount of royalties otherwise earned by you hereunder for the sale of that particular Record in a particular configuration in a particular price category immediately prior to the date on which we cease utilizing the SRLP;

(B) With respect to Albums in the form of Compact Discs, one hundred thirty percent (130%) of our principal distributor's price (before consideration of any discounts resulting from the distribution of Free Goods) from time to time, to its customers;

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(C) With respect to Audio-Visual Records, an amount equal to the monies Received by us from the sale of those Audio-Visual Records, less a distribution fee of fifteen percent (15%) of those monies; and

(D) With respect to Records sold as Premiums or Records sold by us directly to consumers, an amount equal to the monies actually Received by us from the sale of those Records, after deduction of shipping or handling costs (other than those shipping and handling costs actually paid directly by the consumer and Received by you), if any; and

(ii) With respect to Records sold outside of the United States:

(A) For all Records (other than Audio-Visual Records, Records sold by us or our Licensees directly to consumers and Premiums): (1) the SRLP, if the SRLP is the price upon which our Licensee in the country in question computes and pays royalties to us on sales of Records; (2) if our Licensee in a particular country computes and pays royalties to us on sales of Records on a retail-related or derived price using an uplift from the applicable wholesale price (with the uplift determined in accordance with the generally accepted practice in the industry in the country in question), then that retail-related or derived price used by our Licensee in the country in question in accounting to us; (3) if neither (1) nor (2) above applies, then an amount equal to one hundred twenty-six percent (126%) of the wholesale price or equivalent (including any published price to dealer) which our Licensee in a particular country uses in accounting to us for royalties on those sales;

(B) With respect to Audio-Visual Records, an amount equal to the monies actually Received by us from the sale of those Audio-Visual Records, less a distribution fee of fifteen percent (15%) of those monies; and

(C) With respect to Records sold as Premiums or Records sold by us or our Licensees directly to consumers, an amount equal to the monies actually Received by us from the sale of those Records, after deduction of any shipping or handling costs (other than those shipping and handling costs actually paid directly by the consumer and Received by you), if any;

(jj) The term "Selection" shall mean a Composition, poem, dramatic

work, comedy routine or other verbal expression;

(kk) The term "Single" shall mean a seven (7) inch Conventional Disc or its Conventional Tape or other Record equivalent with no more than two (2) different Selections;

(ll) The term "Site" shall mean an Internet site on the world-wide web or any other location on any successor to the Internet or on or in any similar or dissimilar medium of communication accessible to consumers or businesses, relating to Records, to your professional activities in the entertainment industry, or to goods or services related to you or to your professional activities in the entertainment industry;

(mm) The term "SRLP" shall mean the suggested retail list price established from time to time by us or our Licensees for any Record in any particular configuration, which shall be determined from time to time with reference to the relevant wholesale price in a manner that shall be applied consistently to a majority of our (or our Licensees') then-current recording artists;

(nn) The term "Territory" shall mean the universe; and

(oo) The term "USNRC Net Sales" shall mean Net Sales of Records sold by us to consumers in the United States bearing the same Royalty Base Price as the majority or plurality of the new Record releases in the configuration in question and for which a royalty is earned by you pursuant to paragraph 9 above (and, without limiting the generality of the foregoing, shall exclude sales or distributions set forth in subparagraphs 9(b)(i) through (iv) and in subparagraphs 9(b)(vii) [except that the fact that a Record is a New Record shall not in and of itself render such a sale not a USNRC Net Sale provided it meets all other requirements therefor] and (viii) above).

19. Indemnity. You hereby indemnify, save and hold us and our affiliates, distributor and licensees, and our and their respective officers, directors, employees, agents and other representatives harmless from any and all damages, liabilities, costs, losses and expenses (including legal costs and attorneys' fees) arising out of or connected with any third-party claim, demand or action inconsistent with any of the warranties, representations or covenants made by you in this Agreement. You shall reimburse us, on demand, for any payment made by us at any time with respect to any damage, liability, cost, loss or expense to which the foregoing indemnity applies and we shall have the right to deduct from any monies payable hereunder the amount for which you are required to reimburse us and have not so reimbursed us. Your indemnity hereunder, however, shall not apply unless the claim, demand or action in question results in a judgment in a court of competent jurisdiction or a settlement made with your prior written consent. Pending the determination of any claim, demand or action, we may, at our election, withhold payment of any monies otherwise payable to you hereunder in an amount which does

not exceed your potential liability to us pursuant to this paragraph 19, but any amount so withheld shall be released under the following conditions: (a) no action has been commenced within the statutory limitations period applicable to that action (but in no event less than twelve (12) months after we receive notice of any such claim, demand or action and only if we have not actually incurred legal fees for attorneys who are not our regular employees or court costs); or (b) you post a Satisfactory Bond. The term "Satisfactory Bond" shall mean an indemnity or surety bond in a form, in an amount, and with a bonding company approved by us, the amount of which shall be nonetheless reasonably related to the claim, demand or action involved and our reasonably anticipated attorneys' fees and legal costs in connection therewith. You shall have the right to participate in the defense of any claim subject to this paragraph 19 with counsel of your selection at your sole expense. Our decision with respect to the defense of any such claim, however, shall be final. We shall not enter into a settlement of any claim subject to this paragraph 19 without your prior written consent. If, however, you fail to consent to a settlement that we find acceptable, you shall promptly thereafter post a Satisfactory Bond. If you fail to post a Satisfactory Bond, we may settle such claim, demand or action and your indemnity hereunder shall apply with full force and effect.

20. Assignment. We shall not assign this Agreement in its entirety or the entirety of our rights hereunder except to any subsidiary, affiliated, controlling or other related company (including, without limitation, any Person related to the Walt Disney Company), to any partnership or joint venture in which we participate, or to any Person owning or acquiring a substantial portion of our stock or assets or into which or with which we might merge or consolidate. The foregoing shall not limit our right to assign to any Person any of our rights hereunder in the normal course of business. You shall not have the right to assign this Agreement or any of your rights hereunder or to delegate any of your obligations hereunder, except that you shall have the right to assign the right to receive monies payable to you hereunder to not more than one (1) Person of which we have prior written notice. Our compliance with any such assignment shall be an accommodation to you only and that assignee, if any, shall not be a third party beneficiary of this Agreement and, without limiting the generality of the foregoing, shall have no rights or remedies under this Agreement or otherwise in connection with our failure to perform any of our obligations hereunder. Notwithstanding the foregoing, you shall have the right to assign this Agreement in its entirety to a corporation furnishing your exclusive personal services which is wholly-owned and controlled by you, provided that the corporation and you execute documentation of that assignment which is reasonably satisfactory to us evidencing that corporation's obligation to be bound by the terms hereof and to furnish your services to perform the terms hereof and evidencing your obligation to guarantee the corporation's performance (such as, but not limited to, customary inducement letters). No such assignment to a corporation as aforesaid shall be effective unless and until that documentation is so executed.

21. Notices. All notices shall be in writing and shall either be served by personal delivery, certified mail (return receipt requested), facsimile transmission (with a copy sent concurrently by certified mail, return receipt requested) or by overnight air express (or

courier shipment if outside the United States) if such service actually provides proof of mailing, all charges prepaid, except that statements and payments may be sent by regular mail. All notices, statements and payments to you hereunder shall be addressed to you at the address set forth on page 1 above or at such other address as you may hereafter notify us from time to time. All notices to us hereunder shall be addressed to us at the address set forth on page 1 hereof or at such other address as we shall designate in writing from time to time and shall be addressed to the attention of our Senior Vice President, Business & Legal Affairs. Except as otherwise provided herein, notices shall be deemed given when personally delivered, mailed as aforesaid, or transmitted by facsimile (with a concurrent copy mailed as aforesaid), all charges prepaid, except that notices of change of address shall be effective only after actual receipt. A courtesy copy of each notice to you shall be sent simultaneously to _____, but any failure to send such courtesy copy shall not constitute a breach of this Agreement nor shall it affect the effectiveness of the applicable notice.

22. Miscellaneous.

(a) This Agreement sets forth your and our entire understanding relating to its subject matter and supercedes and replaces all prior negotiations, proposed agreements and agreements, written or oral. No modification, amendment, waiver, termination or discharge of this Agreement or of any its terms shall be binding upon either of us unless confirmed by a document signed by you and by a duly authorized officer of ours. No waiver by you or us of any term of this Agreement or of any default hereunder shall affect your or our respective rights thereafter to enforce that term or to exercise any right or remedy in the event of any other default, whether or not similar. If any provision of this Agreement shall for any reason be held to be unenforceable or illegal, that provision shall be severed from this Agreement and the remainder of this Agreement shall be valid and enforceable between the parties hereto just as if the provision held to be unenforceable or illegal had never been included in this Agreement;

(b) (i) We shall not be deemed to be in breach of any of our obligations hereunder unless and until you shall have given us notice describing in detail the breach and we shall have failed to cure that breach within thirty (30) days after our receipt of that notice; and

(ii) Except with respect to your recording of any Selection prior to the Restriction Date applicable thereto, the delivery to us of the Masters in accordance with the terms hereof and any of the exclusive rights granted to us hereunder, you shall not be deemed to be in breach of any of your obligations hereunder unless and until we shall have given you notice describing in detail that breach, and you shall have failed to cure that breach within thirty (30) days after your receipt of that notice. Nothing contained in this subparagraph shall limit our right to seek injunctive relief hereunder;

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(c) Our payment obligations under this Agreement are conditioned upon your full and faithful performance of the material terms hereof;

(d) Wherever your approval or consent is required hereunder, that approval or consent shall not be unreasonably withheld. You shall give us notice of your approval or disapproval or of your consent or non-consent within seven (7) days (except as provided to the contrary herein) after our notice is sent and in the event of your disapproval or non-consent your notice shall contain the specific reasons therefor. Your failure to give us notice as aforesaid shall be deemed to be consent or approval, as the case may be, with respect to the matter submitted;

(e) Nothing herein contained shall constitute a partnership, joint venture or fiduciary relationship between you and us. Except as otherwise expressly provided herein, you are performing all obligations hereunder as independent contractors. Neither party hereto shall hold itself out contrary to the terms of this subparagraph and neither you nor we shall become liable for any representation, act or omission of the other contrary to the provisions hereof;

(f) This Agreement shall not be deemed to give any right or remedy to any third Person unless that right or remedy is specifically granted by us in writing to that third Person;

(g) The provisions of any applicable collective bargaining agreement between us and any labor union or guild which are required by the terms of that agreement to be included in this Agreement shall be deemed incorporated herein as if those provisions were expressly set forth in this Agreement;

(h) In the event of any action, suit or proceeding arising from or based upon this Agreement brought by either party hereto against the other, the prevailing party shall be entitled to recover from the other its attorneys' fees reasonably incurred in connection therewith in addition to the costs of that action, suit or proceeding;

(i) Except as otherwise expressly provided herein, all rights and remedies herein or otherwise shall be cumulative and none of them shall be in limitation of any other right or remedy;

(j) THIS AGREEMENT HAS BEEN ENTERED INTO IN THE STATE OF NEW YORK AND ITS VALIDITY, CONSTRUCTION, INTERPRETATION AND LEGAL EFFECT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS ENTERED INTO AND PERFORMED ENTIRELY WITHIN THE STATE OF

NEW YORK (WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAWS PRINCIPALS UNDER NEW YORK LAW). THE VENUE FOR ANY ACTION, SUIT OR PROCEEDING ARISING FROM OR BASED UPON THIS AGREEMENT SHALL BE THE APPROPRIATE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK IN THE STATE OF NEW YORK. IN CONNECTION WITH THE FOREGOING, YOU AND WE EACH AGREE TO SUBMIT TO AND BE BOUND BY THE JURISDICTION OF THE APPROPRIATE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK IN THE STATE OF NEW YORK;

(k) The paragraph headings herein are solely for the purpose of convenience and shall be disregarded in the interpretation of this Agreement or any of its terms;

(l) We may obtain, at any time during the Term, at our non-recoupable cost, insurance on the lives of one (1) or more members of you. We or our designees shall be the sole beneficiary of that insurance and neither you, nor any member of you, nor any Person claiming rights through or from you shall have any rights in that insurance or the proceeds thereof. You shall submit to such physical examinations and complete and deliver such forms as may be reasonably required and otherwise cooperate with us for the purpose of enabling us to secure that insurance. Subject to the requirements of that insurance company in question, you shall have the right at your sole expense to have a physician of your choice present at any such medical examination. Your failure to qualify for insurance we desire to obtain shall not be a breach hereof. Except as may be necessary to effectuate the provisions hereof or as may be necessary in our ordinary course of business, we shall not communicate at any time to any third party, other than your authorized representatives (including, without limitation, your attorney or personal manager), any information obtained by us as a result of such physical examinations;

(m) The provisions of the Immigration Reform and Control Act ("IRCA") are mandatory. You shall complete the Immigration and Naturalization Service Form I-9 ("Employment Eligibility Verification Form") no later than concurrently with your execution of this Agreement. Without limiting anything contained herein, any and all payments to or on behalf of you under this Agreement are conditioned upon your delivery to us of a completed Employment Eligibility Verification Form. This provision shall not in any way modify or alter the fact that you are performing your obligations hereunder as an independent contractor;

(n) You expressly acknowledge that, as of the date hereof, we are a wholly owned subsidiary of The Walt Disney Company ("WDC"), and as such are a part of a large, diversified international group of affiliated companies engaged in a variety of business activities. We have informed you that we frequently enter into business

transactions with our and/or WDC's affiliates. Without limiting any of our rights hereunder, you expressly acknowledge and agree that we have the right, in our sole discretion, to enter into agreements or other arrangements with our or WDC's affiliates in connection with Masters or other rights granted to us herein. We shall have no obligation, express or implied, to offer any of our rights hereunder to unaffiliated third Persons, whether in lieu of or in addition to offering the rights in question to our or WDC's affiliates, or to otherwise seek or secure any business arrangements with any unaffiliated third Person with respect thereto. You hereby waive any right to make any such claim, whether at law or in equity, asserting the existence and/or breach of any such express or implied obligation. Any agreement between an affiliate of us or WDC, on the one part, and us, on the other, shall be presumed conclusively to be reasonable and to satisfy fully the terms of this Agreement, unless you establish that the terms of the agreement in question, taken as a whole, are materially less favorable to your interests hereunder than would be the terms of similar transactions into which we generally enter with our or WDC's affiliates or, if there are no such similar transactions between affiliated companies, then similar transactions between us and unaffiliated third Persons and us or other WDC affiliates. Your sole and exclusive remedy if you meet the requirements of the foregoing sentence shall be to seek monetary compensation in an amount equal to the amount by which (i) the minimum aggregate amount which would have been credited to your royalty account hereunder had the agreement in question been on the same terms as a similar transaction as provided above exceeds (ii) the aggregate amount actually credited to your royalty account as a result of the transaction in question; and

(o) Each member of you shall be jointly and severally liable for the performance and/or breach by any one (1) or more members of you of any of the provisions or obligations required of you under this Agreement.

23. United States Release Commitment. Provided you have timely fulfilled all of your then-current material obligations hereunder, we shall release on Records in the United States each Required Album not later than one hundred twenty (120) days after the date on which you deliver to us that Required Album ("Domestic Release Period"). No days between November 1 and January 15 of the next calendar year shall be considered to calculate the duration of a Domestic Release Period. If we fail to release a Required Album during the Domestic Release Period, your sole remedy shall be to notify us of that failure (referring specifically to this paragraph) not later than sixty (60) days after the end of that Domestic Release Period for the Required Album in question advising us that the Term shall terminate if we fail to release that Required Album on or before the date that is sixty (60) days after our receipt of your timely notice ("Release Cure Period"). If we release that Required Album in the United States during the applicable Release Cure Period, then, solely for the purposes of this paragraph; we shall be deemed to have released that Required Album during the applicable Domestic Release Period. If we fail to release in the United States during the applicable Release Cure Period that

Required Album subject to your notice, then the Term of this Agreement shall terminate as of the end of the Release Cure Period concerning that unreleased Required Album and we shall have no liabilities or obligations to you in connection with the termination of the Term.

24. Leaving Member Provisions.

(a) The term "Group" shall mean all members of you (whether presently or hereafter signatories to or otherwise bound by the terms of this Agreement) currently collectively and professionally known as "_____". Individuals in addition to those presently members of the Group may become members of the Group only with our prior written approval. Additional members shall be bound by the terms of this Agreement relating to you and you shall cause any additional member to execute and deliver to us such documents as we may deem necessary to evidence that individual's agreement to be so bound. You shall not, without our prior written consent, record any Masters embodying the performances of an additional member prior to your delivery to us of those documents, and if you do so, no such Masters shall be deemed to have been delivered to us until those documents are executed and delivered to us;

(b) A "Leaving Member" shall mean an individual member of the Group who ceases to record as a member of the Group or to engage in other professional activities of the Group. If any individual member of the Group shall become a Leaving Member, you shall promptly give us notice thereof. We shall also have the right to rely on any public statement by any member of the Group that such member has become a Leaving Member;

(c) (i) You hereby grant to us the irrevocable option for the exclusive recording services of any Leaving Member. We may exercise our option by notice to the Leaving Member no later than one hundred twenty (120) days after the date upon which we shall have received your notice required pursuant to subparagraph (b) above. If we shall so exercise our option with respect to any Leaving Member, that Leaving Member shall be deemed to have entered into an exclusive recording agreement with us ("Leaving Member Agreement") pursuant to which we shall be entitled to the exclusive recording services of that Leaving Member on the same terms contained in this Agreement applicable to the Group, except as otherwise hereinafter provided:

(A) The "Term" of a Leaving Member Agreement shall commence as of the date of our notice to that Leaving Member pursuant to the preceding provisions of this subparagraph (c). In addition to the "Initial Period" thereof, we shall have the same number of options, each to extend the Term of the Leaving Member Agreement for a "Renewal Period" as equal the number of separate Required Albums remaining to be

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delivered under this Agreement pursuant to paragraph 3 above (assuming the exercise of all then remaining options for this purpose only) as of the date that individual became a Leaving Member, but in no event shall we have fewer than two (2) such options;

(B) During the Initial Period of the Leaving Member Agreement, the Leaving Member shall record for and deliver to us not later than ninety (90) days after the commencement of the Term of the Leaving Member Agreement three (3) Demos. The term "Demo" shall mean a Master Recording embodying a Leaving Member's performances as the sole featured artist of a single Composition previously unrecorded by that Leaving Member and approved by us and recorded in its entirety in a recording studio, which Master Recording is submitted to us for purposes of evaluating the Leaving Member. We shall own the Demos to the same extent that we own Masters. In addition to the Demos, and at our election, to be made, if at all, by notice to the Leaving Member not later than sixty (60) days after the delivery to us of the Demos, during the Initial Period of that Leaving Member Agreement, the Leaving Member shall record for and deliver to us, at such times as we shall designate or approve, Master Recordings embodying the Leaving Member's featured performances sufficient to constitute one (1) Album. During each Renewal Period of the Leaving Member Agreement, the Leaving Member shall record and deliver to us, at such times as we shall designate or approve, Master Recordings embodying the Leaving Member's featured performances sufficient to constitute one (1) Album;

(C) We shall pay the costs of Demos in an amount not in excess of a budget therefor approved by us in writing. All costs paid by us in connection with the recording of Demos shall be deemed to be Recording Costs under the applicable Leaving Member Agreement. The advances and Recording Funds set forth in paragraph 8 above shall not apply to the Master Recordings recorded by a Leaving Member under a Leaving Member Agreement. In respect of the first Album pursuant to a Leaving Member Agreement, we shall pay the Recording Costs of those Master Recordings in an amount not in excess of the Recording Budget therefor approved by us in writing and we shall pay to the Leaving Member an advance recoupable from royalties earned by that Leaving Member in an amount equal to [the Execution Advance/the advance set forth in subparagraph 8(a) above payable promptly after the execution of this Agreement] multiplied by a fraction the numerator of which is the number of Leaving Members subject to the Leaving Member Agreement in question and the denominator of which is the total number

of members of the Group immediately prior to the date on which the Leaving Members in question became Leaving Members. For each Required Album pursuant to a Leaving Member Agreement after the first Album, the advances set forth in paragraph 8 above that correspond to those Required Albums pursuant to this Agreement shall be reduced by an amount equal to one-third (1/3) thereof and the Recording Funds, if any, set forth in paragraph 8 above that correspond to those Required Albums pursuant to this Agreement shall be determined on the basis of royalties derived from the applicable Required Album pursuant to the Leaving Member Agreement with the Minimum Amount and Maximum Amount of each such Recording Fund being reduced by an amount equal to one-third (1/3) thereof;

(D) All of the royalty rates pursuant to paragraph 9 above shall be reduced by an amount equal to twenty percent (20%) thereof;

(E) An amount equal to all unrecouped advances and other charges pursuant to this Agreement as of the date of the commencement of a Leaving Member Agreement shall constitute an advance recoupable from royalties payable by us under that Leaving Member Agreement; and

(F) Notwithstanding anything to the contrary contained herein, the provisions of subparagraphs ____ and ____ shall not apply to any Leaving Member Agreement; and

(ii) At our request, you shall cause any Leaving Member to execute and deliver to us all documents as we may deem necessary to evidence the foregoing, including, without limitation, an exclusive recording agreement with us relating to that Leaving Member's recording services;

(d) Notwithstanding the foregoing, if any member of the Group shall be a Leaving Member or if the Group shall completely disband, then, without limiting our other rights and remedies, we may terminate the Term of this Agreement by notice to you and we shall thereby be relieved of any obligations or liabilities hereunder, except our obligations with respect to Masters recorded prior to that termination. If we elect to so terminate the Term of this Agreement, the provisions of subparagraph (c) above shall be applicable to each member of the Group as if each member were a Leaving Member;

(e) If any member of the Group shall become a Leaving Member and does not become a party to a Leaving Member Agreement, that member shall not have the

right thereafter to use any name utilized by the Group (or any name similar thereto) or the phrase "formerly a member of [any name used by the Group]" (or any similar expression) in connection with any of his or her professional activities relating to Records; and

(f) Notices to a Leaving Member may be sent by us to your address above, or at such other address of which that Leaving Member shall have advised us in writing.

25. Artwork.

(a) The Artwork to be embodied on the packaging (inside and outside) of each Required Album to be released by us in the United States during the Term ("Cover Artwork") shall be mutually approved by you and us. We shall make available to you at our offices in New York, New York for your approval (which approval shall not be withheld unreasonably) the Cover Artwork for each Required Album. You shall be deemed to have approved any Cover Artwork furnished to you unless you notify us in writing of your specific objections thereto within five (5) business days after we have furnished you that Cover Artwork for your review. If you object to any Cover Artwork furnished to you as aforesaid and we alter or revise that Cover Artwork to satisfy your objections, we shall not thereafter be obligated to resubmit or furnish to you any such Cover Artwork for your approval. We shall not utilize any Cover Artwork of which you have timely notified us of your disapproval in accordance with the provisions of this subparagraph 26(a). Any Cover Artwork approved or deemed approved by you hereunder shall be deemed approved by you for our use thereafter for all purposes hereunder. Notwithstanding anything to the contrary contained herein, you shall not have the right to object to any Cover Artwork on the basis that you desire to use in connection with that Required Album a multi-fold jacket or any special sleeve or insert or other special element;

(b) Nothing contained in this Agreement shall limit our right to alter any Artwork even if previously approved by you, to the extent: (i) the Artwork, is offensive, defamatory or obscene or might otherwise infringe upon the rights of any Person; (ii) the Artwork shall increase the per unit manufacturing costs of packaging then currently generally paid by us for the packaging of Records embodying the featured performances of a majority of the artists whose services are then currently furnished to us; (iii) required to comply with our or our affiliates' or licensees' customary requirements for copyright notices, name and logo placement, so-called "bar codes" or other point of sale requirements, stickers or other similar alterations, as may be required by government regulation or order or industry agreement; or (iv) we determine in our good faith business judgment that the Artwork will materially interfere with our ability to market Records in any particular territory.

(c) Without limiting the generality of any of our rights herein and except as expressly provided in subparagraph 26(d) below, nothing contained in this Agreement is intended to grant, license or assign to you any right in or to any Artwork for the Territory whether or not used on or in connection with the sale of Records hereunder, all of which are hereby expressly reserved; and

(d) Notwithstanding the foregoing, promptly after your written request therefor, we shall grant to you or your licensee ("Designated User") a non-exclusive license to use and reproduce in the Territory only that Artwork owned or exclusively controlled by us and used for the packaging of a Required Album or a GH Album released by us during the Term in the United States ("Qualifying Artwork") solely in connection with the exploitation of your Name, likeness or logo or other materials concerning you on or in connection with products or services other than Records. The rights granted to you in the immediately preceding sentence shall not limit our rights pursuant to this Agreement to use Qualifying Artwork in connection with Records and other promotional merchandise or materials. Our grant to Designated User of those rights in and to the Qualifying Artwork shall be expressly subject to the following terms and conditions:

(i) Designated User shall be required to obtain and deliver to us, in advance, all consents by or agreements with any Person which we reasonably may require to look to Designated User and not to us for the fulfillment of any obligations arising out of Designated User's exploitation of the Qualifying Artwork;

(ii) Designated User shall cause a copyright notice to be placed on any use of the Qualifying Artwork which identifies us as the owner of the copyright in and to the Qualifying Artwork;

(iii) We shall have no obligation to license to you or to any other Person any Qualifying Artwork if, in our reasonable business judgment, that license may subject us to unfavorable regulatory action, violate any law, violate the rights of any Person or subject us to any liability for any reason;

(iv) You shall be solely responsible for and shall pay any consideration required to be paid to any Person other than us in connection with your or Designated User's exploitation of Qualifying Artwork;

(v) Designated User (and you) shall indemnify and hold us harmless in accordance with the provisions of paragraph 19 above in connection with any use of Qualifying Artwork;

(vi) In consideration for our grant to Designated User of those rights in and to the Qualifying Artwork in accordance with the provisions of this subparagraph, and as a condition precedent to the effectiveness of that grant, you shall pay to us an amount equal to fifty percent (50%) of the total out-of-pocket costs paid or incurred by us in connection with the preparation of Qualifying Artwork; and

(vii) Nothing contained in this subparagraph 26(d) shall limit any of our right, title or interest in or to any Qualifying Artwork, including, without limitation, our right to exploit Qualifying Artwork as set forth in this Agreement.

26. **Independent Legal Counsel.** YOU ACKNOWLEDGE AND AGREE THAT YOU HAVE BEEN REPRESENTED BY INDEPENDENT LEGAL COUNSEL OR HAVE HAD THE UNRESTRICTED OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL OF YOUR OWN CHOICE FOR PURPOSES OF ADVISING YOU IN CONNECTION WITH THE NEGOTIATION AND EXECUTION OF THIS AGREEMENT. ADDITIONALLY, YOU ACKNOWLEDGE AND AGREE THAT EITHER YOU OR YOUR LEGAL COUNSEL HAVE HAD THE OPPORTUNITY TO INVESTIGATE AND INQUIRE ABOUT ALL OF THE RELEVANT FACTS AND CIRCUMSTANCES IN CONNECTION WITH YOUR ENTERING INTO AND EXECUTING THIS AGREEMENT. IF YOU HAVE NOT BEEN REPRESENTED BY LEGAL COUNSEL OF YOUR OWN CHOICE, YOU ACKNOWLEDGE AND AGREE THAT YOUR FAILURE TO BE SO REPRESENTED WAS DETERMINED SOLELY BY YOU, WITHOUT ANY INTERFERENCE BY US OR ANY PERSON RELATED TO US.

This Agreement shall not become effective until signed by you and countersigned by a duly authorized officer of ours.

If the foregoing correctly reflects your agreement with us, please so indicate by signing below.

Very truly yours,

HOLLYWOOD RECORDS, INC.

By: _____
An Authorized Signatory

AGREED AND ACCEPTED:

Birth Date: _____
Soc. Sec. No.: _____
Union Affils.: _____

Birth Date: _____
Soc. Sec. No.: _____
Union Affils.: _____

Birth Date: _____
Soc. Sec. No.: _____
Union Affils.: _____

EXHIBIT A

Reference is made to the agreement between Hollywood Records, Inc. ("Hollywood"), 170 Fifth Avenue, 9th Floor, New York, New York 10010, on the one part, and

_____ (collectively professionally known as "_____" and referred to below as "Artist"), on the other part, dated as of _____, ____ ("Artist Agreement"). I hereby certify that I shall produce or mix certain master recordings embodying Artist's featured performance ("Masters") pursuant to an agreement between Artist and me ("Services Agreement") which provides for valuable consideration to be paid to me. As part of my material obligations pursuant to the Services Agreement and for the express and direct benefit of Hollywood, I hereby:

1. Grant to Hollywood the perpetual right to use and publish and to permit others to use and publish my name (whether legal or professional), signature, approved likeness, and approved biographical material concerning me for advertising and trade purposes in connection with the exploitation of Masters, or to refrain therefrom.
2. Agree to look solely to Artist for the payment of any advances, fees and/or royalties, and will not assert any claim in this regard against Hollywood or attempt to prevent the manufacture, sale or distribution of Masters produced under the terms and conditions of the Services Agreement. Any payments that I receive from Hollywood in connection with the exploitation of Masters or my services pursuant to the Services Agreement shall have been made solely as an accommodation to Artist and nothing contained herein, in the Services Agreement or in the Artist Agreement shall constitute me a beneficiary of or party to the Artist Agreement or any other agreement between Hollywood and Artist.
3. Acknowledge and agree that each Master recorded under the Services Agreement embodying the results and proceeds of my services (a) is prepared within the scope of the Artist's engagement of my personal services and is a "work made for hire", or (b) constitutes a work specially ordered or commissioned by Artist or Hollywood for use as a contribution to a collective work or compilation and shall be considered a "work made for hire". I further acknowledge that Hollywood is the exclusive owner of copyright with respect to each Master and any "sound recording" or "phonorecord" or "copy" manufactured therefrom (individually and collectively called the "Work"), and that Hollywood has the right to exercise all rights of the copyright proprietor with respect thereto. Notwithstanding the foregoing, if I am deemed an "author" of any Work, I hereby irrevocably transfer, grant, convey and assign to Hollywood, exclusively, perpetually and throughout the universe, all exclusive right, title and interest in and to such Work, including, but not limited to, the copyright therein and thereto. I hereby grant to Hollywood a power of attorney, irrevocable and coupled with an interest, to execute for me and in my name, all documents and instruments necessary or appropriate to effectuate the intents and purposes of this paragraph 3 and to accomplish, evidence and perfect the rights granted to Hollywood pursuant to this paragraph 3, including, without limitation, documents to assign such copyrights to Hollywood.

4. Agree that I shall not produce, co-produce, mix or re-mix prior to the date three (3) years after the Master shall have been delivered to Hollywood in accordance with the provisions of the Artist Agreement, any recording for any person, firm or corporation other than Hollywood which embodies, in whole or in part, any of the material recorded in the Masters.

Print Name: _____

Signature: _____

SS#: _____

Address: _____

Etunelab™

EXHIBIT B

[ARTIST NAME AND ADDRESS]

Dated: As of _____, _____

Hollywood Records, Inc.
170 Fifth Avenue
9th Floor
New York, New York 10010
Attn: Business Affairs

Re: Hollywood Records, Inc. -w- "_____": Recording Agreement/
Letter of Direction for Producer Agreement -w-

Ladies and Gentlemen:

Reference is made to that certain recording agreement between you and us [me] dated as of _____, _____, as amended ("Agreement"). Pursuant to subparagraph 17(b) of the Agreement, we [I] hereby submit to you the following:

1. We [I] have engaged _____ ("Producer") to produce Masters intended to be embodied on a Required Album. Although the Agreement requires us [me] to pay any royalties or other consideration payable in respect of Producer's services, we [I] hereby request and authorize you to pay to and in the name of _____ payments for the Producer's services on our [my] behalf as follows:

(a) An advance of _____ ("Producer Advance"), payable one-half (½) promptly after the later of (1) the commencement of recording sessions for the Required Album concerned in accordance with all of the terms of the Agreement and (2) your receipt of my written notice indicating that recording sessions for the Required Album concerned have commenced in accordance with the terms of the Agreement and one-half (½) promptly after our [my] delivery to you of that Required Album in accordance with all of the terms of the Agreement or, if later, your determination of the Recording Costs for the Required Album. The Producer Advance will be recoupable by you from all royalties earned by Producer (or the entity furnishing Producer's services) under subparagraph (b) below. To the extent not so recouped, the

Producer Advance may be recouped by you from all royalties earned by us [me] pursuant to the Agreement, but all amounts so recouped from royalties payable to us [me] shall be credited to our [my] royalty account if subsequently recouped from royalties payable to or on behalf of Producer. The Producer Advance shall be included in the Recording Budget for the applicable Required Album under the Agreement and shall reduce the applicable Recording Fund, if any; and

(b) (i) A royalty on exploitations of the Masters ("Producing Royalty"), computed at a basic rate of _____ (___%) of the applicable Royalty Base Price ("Producer Basic Rate") in the United States applicable to an Album embodying solely Masters produced by Producer pursuant to the engagement described herein (instead of the Basic U.S. Rate fixed in subparagraph 9(a)(i) of the Agreement applicable to an Album) and otherwise prorated, calculated, proportionally reduced, adjusted and paid in all respects and for all exploitations of Masters on the same basis on which the Basic U.S. Rate applicable to an Album is prorated, calculated, proportionally reduced, adjusted and paid pursuant to the Agreement. For the avoidance of doubt, on exploitations of Masters produced by Producer for which we are [I am] paid a percentage of Net Receipts pursuant to the Agreement, the Producing Royalty shall be an amount equal to that portion of Net Receipts payable to us [me] on those exploitations multiplied by a fraction, the numerator of which is the Producer Basic Rate and denominator of which is the applicable Basic U.S. Rate. Notwithstanding the foregoing, on exploitations of Audio-Visual Recordings produced by Producer for which we are [I am] paid a percentage of Net Receipts, the Producing Royalty shall be an amount equal to fifty percent (50%) of that portion of Net Receipts earned by us [me] on those exploitations multiplied by a fraction the numerator of which is the Producer Basic Rate and the denominator of which is the applicable Basic U.S. Rate. If any Record embodies one (1) or more Masters produced by Producer together with other Masters or Master Recordings, then the Producer Basic Rate shall be multiplied by the Reduction Factor with respect to the Masters produced by Producer and subject to all of the other provisions hereof. Further, the amount of the Producing Royalty shall be reduced by royalties payable by us [me] for the services of any other Person to produce, mix or complete the production of the Masters intended to be produced by Producer. The amount of the Producing Royalty shall be deducted from all royalties earned by us [me] as provided in the Agreement;

(ii) The Producing Royalty will not be payable until you have recouped all Recording Costs attributable to the particular Album embodying the Masters produced by Producer pursuant to the engagement described herein at our [my] net royalty from the exploitation of all Masters embodied on that Album (i.e., our [my] royalty as reduced to reflect the deduction of the Producing Royalty

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and all royalties payable to any other third party producers, mixers or remixer). After that recoupment, the Producing Royalty will be computed and paid retroactively to the first Record sold, subject to recoupment of the Producer Advance; and

(iii) The foregoing shall apply commencing with the first accounting period that ends at least three (3) months after your receipt of this letter.

2. Your compliance with this authorization will constitute an accommodation to us [me] alone, and nothing herein shall constitute Producer a beneficiary of or party to this instrument, the Agreement or any other agreement between you and us [me]. All payments hereunder will constitute payment to us [me], and you will have no liability by reason of any erroneous payment you may make or by your failure to comply with this authorization. We [I] will indemnify and hold you harmless against any claims asserted against you and any damages, losses or expenses incurred by you by reason of any such payment or otherwise in connection herewith.

3. All monies becoming payable under this authorization shall be remitted to Producer at the following address or otherwise as Producer directs you in writing:

4. Unless otherwise defined herein, all words and phrases used herein and defined in the Agreement shall have the meanings attributed to those words and phrases in the Agreement.

Very truly yours,

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EXHIBIT “B”

Agreement made this 1st day of January, 2009 by and between Benjamin Burnley ("Burnley"), Aaron Fincke ("Fincke") p/k/a Aaron Fink and Mark Klepaski ("Klepaski") p/k/a Mark James.

1. Burnley, Fincke and Klepaski have been and intend during the Term hereof to continue to perform as members of the band professionally known as "Breaking Benjamin" (hereinafter collectively the "Band" and individually each a "Member"). This Agreement sets forth the basic terms by which the Band will conduct its business and shall apply to any partnership, corporation, LLC or any other business entity that the Members may form to conduct the business of the Band. It is the Members' intention to enter into one or more formal agreements containing the terms of this agreement and additional terms. In connection therewith, the Members shall negotiate in good faith any such additional terms, provided that unless and until such more formal agreement(s) has/have been fully executed, this agreement shall be deemed valid and legally binding.
2. Except as set forth herein, the laws of the State of Pennsylvania relating to the applicable business entities shall apply to each and every business entity Burnley, Fincke and Klepaski may form to conduct Band-related business. Disputes hereunder shall be submitted to binding arbitration to be administered by the American Arbitration Association in Luzerne County, Pennsylvania.
3. The Term of this Agreement shall be deemed to have commenced on the date hereof and shall continue until the earlier of the following: (a) such time as Burnley is deceased, disabled or infirm to the extent that he is incapable of completing the new studio album to be recorded hereafter by the Band for delivery to Hollywood Records (the "New Band Album") and/or performing in connection with live concert appearances in support of the New Band Album; or (b) the end of the "Album Cycle" hereinafter defined. The time period commencing as of the date hereof and ending as of the completion of all live concert appearances and tours performed by the Band in support of the New Band Album shall sometimes hereinafter be referred to as the "Album Cycle". Fincke and/or Klepaski may be dismissed from the Band for "cause" as such term is commonly understood in the music industry. With respect to the death, dismissal for cause or withdrawal from the Band of Fincke or Klepaski (each a "Departed Member" as applicable), the remaining Members shall have the right to continue hereunder without the Departed Member(s) and/or to form a new agreement among themselves. In the event that a Member should become a Departed Member, the Term hereof with respect to such Departed Member shall be deemed to have terminated as of the date that such Member became a Departed Member.
4. Each Member hereby grants the Band the right in perpetuity to use and to permit others to use and publish the applicable Member's name (both legal and professional, and whether presently or hereafter used by such Member), likeness,

caricature, other identification and biographical material concerning Member (collectively, the "NIL Materials") for purposes of trade: (a) in connection with the Member's Band-related activities which activities occurred during the Term; and/or (b) in connection with product created in connection with contracts entered during the Term. During the Term each Member shall have the right to approve the applicable NIL Materials related to such Member, provided that such approval shall not be unreasonably withheld and any objections must be specific, in writing and received by the Band within ten (10) days after the applicable material(s) have been made available to the applicable Member. The applicable Member's approval shall be deemed given in the event that such Member shall fail to submit objections in accordance with the provisions of this subparagraph. Once a Member has approved any such NIL Material(s), the same need not be approved again in respect of any subsequent use thereof.

5. For One Dollar (\$1) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Fincke and Klepaski hereby irrevocably assign to Bumley any and all right, title and interest that Fincke and Klepaski may have in and to the Band name "Breaking Benjamin" as well as any and all logo(s) and/or trademark(s) and/or servicemark(s) in any manner connected thereto (collectively the "ID Materials"). For One Dollar (\$1) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Bumley hereby grants the Band a license (the "ID Materials License") during the "ID Materials License Term" (hereinafter defined) to utilize the ID Materials solely in connection the activities of the Band provided that: (a) the ID Materials may only be used by a band containing Bumley, Fincke and Klepaski as Members except: (i) in the event that Fincke or Klepaski is a Departing Member the ID Materials may be used by Bumley and the other remaining Member; and (ii) in the event that both Fincke and Klepaski are Departing Members the ID Materials may be used by Bumley alone; and (b) no Departed Member shall have the right to utilize the ID Materials (either alone or with another Departed Member) after the date that such Member became a Departed Member. The "ID Materials License Term" shall commence as of the date hereof and shall automatically terminate upon the earliest of the following: (c) Bumley's death; (d) the failure of the Band to perform in live concert or to record master recordings for a period of five (5) years; or (e) the expiration of the life of the trademark(s) and/or servicemark(s). The parties shall execute any and all additional documents required to effectuate the foregoing assignments and grants.

6. During the Term, all net income derived by the Band in connection with Band-related activities shall be divided as follows:

A. With respect to the New Band Album, provided that all Members have preformed for the recording of the master recordings embodied thereupon, it is contemplated that Hollywood Records will be forwarding an initial so-called "in-pocket" advance in the amount of Two Hundred Twenty Five Thousand (\$225,000) Dollars,

provided that such advance is paid by Hollywood Records, such advance shall be allocated as follows: (a) One Hundred Thousand (\$100,000) Dollars to Burnley; (b) Sixty Two Thousand Five Hundred (\$62,500) Dollars to Fincke; and (c) Sixty Two Thousand Five Hundred (\$62,500) Dollars to Klepaski. Notwithstanding anything to the contrary in this agreement: (A) In the event that the aforementioned "in pocket" advance is less than Two Hundred Twenty Five Thousand (\$225,000) Dollars but at least One Hundred Twenty Five Thousand (\$125,000) Dollars, Fincke and Klepaski shall each receive Sixty Two Thousand Five Hundred (\$62,500) Dollars therefrom with Burnley receiving the remainder; and (B) In the event that the aforementioned "in pocket" advance is less than One Hundred Twenty Five Thousand (\$125,000) Dollars, Fincke and Klepaski shall each receive fifty percent (50%) thereof with Burnley receiving no part thereof. Otherwise, with respect to the master recordings recorded by all members of the Band in connection with the New Band Album, the allocation of net advances and royalties shall be based upon each respective Member's contribution(s) to the applicable master recording(s). The allocation of such revenue shall be documented in one or more separate agreement(s) (each a "Term Recording Allocation Agreement").

B. With respect to net publishing monies derived from musical compositions written during the Term (each a "Term Composition"), only the applicable Member(s) who actually wrote such composition(s) shall be entitled to a share thereof and the allocation of such share(s) shall be on a song-by-song basis in accordance with the applicable Member(s) authorship of such musical composition(s). The allocation of such revenue shall be documented in one or more separate agreement(s) (each a "Term Composition Split Agreement").

C. With respect to net monies from merchandise, excluding merchandise sold in connection with live performances, and all other sources not addressed in the applicable Term Recording Allocation Agreement(s) and/or Term Composition Split Agreement(s) and/or in subparagraph 6(D) below the allocation thereof shall be as follows: (i) 1/3 thereof to Burnley; (ii) 1/3 thereof to Fincke; and (iii) 1/3 thereof to Klepaski. ;

D. With respect to net monies from touring including merchandise sold in connection with live performances, the allocation thereof shall be as follows: (i) with respect to the net monies derived from the first seventy five (75) live performance dates: (a) 1/3 thereof to Burnley; (b) 1/3 thereof to Fincke; and (c) 1/3 thereof to Klepaski; (ii) with respect to the net monies derived from the next (50) live performance dates (i.e., with respect to shows 76 through 125): (a) 35% thereof to Burnley; (b) 32½% thereof to Fincke; and (c) 32½% thereof to Klepaski; and (ii) with respect to all net monies derived from the 125th and all subsequent live performance dates: (a) 40% thereof to Burnley; (b) 30% thereof to Fincke; and (c) 30% thereof to Klepaski.

7. For the avoidance of doubt, following the Term, each applicable Member shall be entitled to such Member's allocated share of the following: A. net revenues derived

from merchandise sold during the Term; B. net revenues derived from Term Recordings in accordance with the applicable Term Recording Allocation Agreement(s); and C. net revenues derived from Term Compositions in accordance with the applicable Term Composition Split Agreement(s).

8. All expenses in connection with Band-related activities shall be deemed "off-the-top" expenses to be deducted from gross revenues prior to distribution to the applicable Members.

9. During the Term, no manager, attorney, accountant, tour manager, road crew or other employee shall be hired or fired except by unanimous consent of the Members.


10. No Member of the Band shall enter into any agreement that binds the Band without the written consent of all then-current Members. Each Member warrants and represents that if such Member is offered an opportunity for the Band, such Member shall (i) inform the offerer that no individual Member has authority to bind the Band; (ii) inform the offerer that the Band may only be bound by a written document that is signed by all the then-current Members; and (iii) inform the other then-current Members of the offer. Each Member shall indemnify and hold the other Members and the Band harmless from any cost, liability or expense (including all reasonable attorney's fees) that arise from a breach of this representation and warranty.

11. This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof. No modification, amendment, waiver, termination or discharge of this Agreement shall be binding any party hereto unless confirmed by a written instrument signed by the applicable parties hereto.

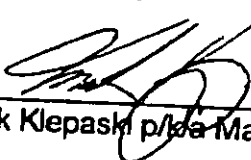
ACCEPTED AND AGREED:



Benjamin Burnley



Aaron Fincke p/k/a Aaron Fink

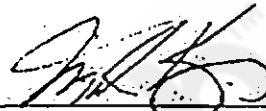


Mark Klepash p/k/a Mark James



VERIFICATION

I, MARK KLEPASKI, hereby depose and say that I have read the foregoing COMPLAINT, and that the facts contained therein are true and correct to the best of my knowledge, information and belief. This Verification is made pursuant to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.



MARK KLEPASKI